



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>







My Dear Mr. [unclear]  
[unclear]  
[unclear]









THE  
**LEGAL OBSERVER,**

AND  
**SOLICITORS' JOURNAL.**

---

**PUBLISHED WEEKLY.**

---

**MAY, 1855, TO OCTOBER, 1855,**

**INCLUSIVE**

---

—“Still attorneyed at your service.”

---

**SHAKESPEARE.**

**VOL. L.**

**LONDON:**

**PUBLISHED FOR THE PROPRIETORS,**

**BY WM. MAXWELL (LATE ALEXANDER MAXWELL AND SON),**

**32, BELL YARD, LINCOLN'S INN.**

**SOLD BY SHERWOOD AND CO., PATERNOSTER ROW;**

**ADAM AND CHARLES BLACK, EDINBURGH;**

**AND HODGES AND SMITH, DUBLIN.**

---

**1855.**

LIBRARY OF THE  
LELAND STANFORD, JR. UNIVERSITY  
LAW DEPARTMENT.

59,532

LONDON :

PRINTED BY G. J. PALMER, SAVOY STREET, STRAND.

# CONTENTS OF VOLUME L.

## NEW STATUTES.

Purchasers' Protection, 5, 453  
 Extension of Charitable Trusts, 8  
 Lunacy Regulation, 32, 455  
 Commons' Inclosure, 32, 275, 455  
 Newspaper Stamp Duties, 137  
 Sewers (House Drainage), 139  
 House of Commons' Proceedings, 139  
 Income Tax, 197, 455  
 Stannary Courts' Jurisdiction, 214, 236  
 Administration of Oaths Abroad, 175, 415  
 Ecclesiastical Courts, (Defamation Suits' Abolition), 176  
 Common Law Pleadings, 176, 414  
 Infants' Marriage Settlements, 198, 454  
 Palatine of Lancaster Trials, 241, 414  
 Bills of Exchange and Promissory Notes, 256, 393, 495  
 Cinque Ports, 258, 413  
 Incumbered Estates (Ireland) Continuance, 276, 455  
 Places of Religious Worship Registration, 276  
 Friendly Societies, 296, 319, 342  
 Limited Liability, 316, 353  
 Despatch of Business (Court of Chancery), 338, 373  
 Charitable Trusts, 358  
 Crown Suits, 376, 414  
 Criminal Justice, 377  
 Merchant Shipping Act Amendment, 395  
 Bills of Lading, 398  
 Youthful Offenders, 399  
 Metropolitan Buildings, 415, 436  
 Metropolis Local Management, 456  
 Nuisances' Removal, 496  
 PUBLIC GENERAL ACTS, 407, 504  
 LOCAL AND PERSONAL ACTS, 447, 468

## PARLIAMENT.

Postponed Bills, 314  
 Notices of Motions for next Session, 316  
 Royal Assents, 295  
 Proceedings in, 150, 168, 213, 253, 268  
 Standing Orders, 323  
 New Members, 71, 168, 250  
 Prorogation, 295, 511

HOUSE OF LORDS' APPEALS, 18, 255

## PARLIAMENTARY REPORTS AND RETURNS.

Chancery, Court of, 140, 228  
 Statute Law Consolidation, 261, 301, 387  
 County Courts, 21, 45, 59, 115, 228, 246, 322

Real Property, Common Law, and Chancery Commissions, 159  
 Mercantile Law, 364, 382, 400, 420  
 Salaries of Judges and officers, 488

## NOTES ON RECENT STATUTES.

Equity Jurisdiction Improvement Act, 84  
 Common Law Procedure Act, 1852, 67, 126, 349  
 Common Law Procedure Act, 1854, 162, 267, 465

## NEW BILLS IN PARLIAMENT.

Personal Estates of Intestates, 28  
 Testamentary Jurisdiction, 29, 54  
 Infants' Marriage Settlements, 54  
 Alteration in Pleadings, 47  
 Leases and Sales of Settled Estates, 47  
 Administration of Oaths Abroad, 49  
 Bills of Exchange and Promissory Notes, 57, 90, 242  
 Law of Mortmain, 64  
 Executor and Trustee, 77, 94, 168  
 Bills of Lading, 77  
 Limited Liability, 95, 193, 273  
 Law of Partnership Amendment, 97  
 Justices of the Peace Qualification, 120  
 County Palatine of Lancaster Trials, 123  
 Acts of Parliament Amendment, 124  
 Cinque Ports, 140  
 Assizes and Sessions, 177  
 Powers under Improvement Acts Regulation, 203  
 Costs of Proceedings in Crown Suits, 219

## LAW REFORM AND SUGGESTED IMPROVEMENTS.

State and progress of, 1, 41, 55, 93, 173 293, 355, 373, 493  
 New Courts of Law, 26, 304  
 County Courts extension, 73  
 Statute law commission, 78, 81, 229  
 Saturday half-holiday, 86, 103, 209, 387, 370  
 Law reporting, 103  
 Legal and general examination, 141  
 Copyhold enfranchisement, 350, 370, 391, 407, 411, 445, 465  
 Court of Chancery, 370, 466  
 Proposed International Council, 408  
 Suggestions of attorneys and solicitors, 476

## NEW RULES AND ORDERS.

House of Lords, 36  
 Chancery, 36, 205  
 Common law, 209, 268, 351

Under Friendly Societies' Act, 461  
 Registration of judgments, 165, 286  
 Post Office, 245, 310, 329, 351, 470

POINTS IN EQUITY, 164, 443

LAW OF EVIDENCE, 162, 223

LAW OF VENDOR AND PURCHASER, 180

#### LAW OF COSTS,

85, 95, 103, 126, 243, 281, 307, 326, 348, 369,  
 390, 406, 430, 443, 486, 502

#### NOTICES OF NEW BOOKS.

Beaumont on Bills of Sale, 391  
 Darling on Trust Funds, 124  
 Davies and Laurent's Law of France, 144  
 Kerr's Action at Law, 66  
 Oke's Friendly Societies' Manual, 501  
 Savage's Sheil's Eloquence, 404  
 Scott's Metropolitan Local Management Act, 488  
 Shelford's Succession Duties, 220  
 Smith's Law of Contracts, 81  
 — Law of Landlord and Tenant, 50  
 Tooke's Monarchy of France, 545  
 Warren's Blackstone, 178  
 — Miscellanies, 98, 443

#### THE BENCH AND THE BAR.

Education and Examination, 90, 433, 434, 507  
 Mr. Justice Maule, 189  
 Mr. Justice Willes, 189  
 New Queen's Counsel, 189  
 Mr. Recorder Warren's Charge, 224  
 Late Mr. Justice Talfourd, 279  
 Mr. Selwyn, Q.C., 280  
 Lectures, 466  
 Circuits of the Judges, 148, 511  
 Barristers called, 89, 165

#### ATTORNEYS AND SOLICITORS.

Taxation, 33, 180, 304, 323, 369, 389, 406, 442  
 Personal Liability, 53, 204  
 Delivery up of papers, 85, 223, 389  
 Enrolment of articles, 101  
 Lien, 146, 267, 389  
 Retainer, 242  
 Payment of money to client, 348  
 Renewal of certificate, 429  
 Privileged communications, 206, 464  
 Delivery of bill, 442, 478

Education and examination, 425  
 Remuneration, 27, 55, 113, 133, 153, 154, 200,  
 202, 233, 281, 333, 478  
 Inns of Chancery, 486  
 Trustees' costs, 290, 350, 477  
 Insolvent cases in County Court, 349, 451  
 Encroachments on, 487  
 Benevolent Institution, 473  
 Annual registration, 509  
 Admission, 109  
 To be admitted, 34, 69, 127, 165  
 Renewal of certificates, 70, 90  
 Dissolution of partnerships, 70, 167, 249, 329,  
 431, 510  
 Perpetual Commissioners, 167, 249, 329, 431,  
 510

Country Commissioners to administer oaths, 431  
 PROCEEDINGS OF LAW SOCIETIES.

Incorporated Law Society, 268, 286, 308, 425,  
 483  
 Juridical Society, 230, 244  
 Law Association for benefit of widows, &c., 248  
 Law Life Assurance Society, 163  
 Leeds Law Society, 27  
 Liverpool Law Society, 27  
 Metropolitan and Provincial Law Association, 14,  
 87, 106, 390, 487, 506  
 United Law Clerks' Society, 147, 180  
 Yorkshire Law Society, 502  
 Provincial Law Societies, 350

#### EXAMINATION.

Questions at, 12, 103  
 Candidates passed, 68, 149  
 Information relating to, 71, 510

#### MISCELLANEA.

Swearing Scotch affidavits in London, 144  
 Embezzlement by bankers, 158  
 Notes on circuit, 351, 370  
 Legal antiquities, 407, 430, 471  
 Legal chronology, 411, 430  
 Legal obituary, 150, 445

SELECTIONS FROM CORRESPONDENCE, 103, 165, 290,  
 311, 431, 445, 466, 510  
 Law appointments, 37, 71, 90, 110, 128, 150,  
 167, 250, 270, 291, 311, 329, 351, 371, 451,  
 471, 511  
 Notes of the week, 55, 71, 90, 110, 128, 189,  
 209, 230, 250, 269, 290, 311, 451

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, MAY 5, 1855.

### STATE OF LAW REFORM.

At the commencement of a new Volume, it may be proper to notice some of the principal projects of Law Reform. They consist of the Testamentary Jurisdiction Bill;—the Executor and Trustee Bill;—the Bills of Exchange Bills;—the Despatch of Business in the Court of Chancery;—the Charitable Trusts' Act Extension;—the Appointment of Public Prosecutors and District Agents;—and, though last not least, the Remuneration of Solicitors.

As to the Testamentary Jurisdiction Bill, although it appeared to be at first favourably received by the Profession, a considerable change of opinion has taken place amongst several Solicitors on the subject of the abolition of the Ecclesiastical Courts. The Proctors, we understand, now propose that in lieu of the Solicitor-General's plan, the Court should be converted into a Queen's Court of Probate, confined exclusively to the Proctors in common form business, but admitting the Solicitors to practise in contentious business. It is also intimated that the prohibitory enactment by which proctors were not allowed to act as agents for Solicitors will be willingly repealed, and a participation in the business at Doctors' Commons take place where the Solicitor introduces the business and is responsible for payment in like manner as between town and country Solicitors.

Whether this will meet the views or expectations of the larger branch of the Profession, or whether the Government will sanction the compromise, we are not prepared to say; but we deem it right to place both sides of the question before our readers.

It is understood, amongst other reforms, that there will be one Probate

Court in the metropolis, which will extend over the whole kingdom; and there can be no doubt, we presume, that it would be a great improvement in the law, and a material saving to the public in time and expense, if administrations and probates were granted at one place, and their operation extended over the whole country, for the purpose both of readily ascertaining where probates and administrations were granted, and where they may be made available for the recovery of property in all Courts and places. It is true that the comparatively small number of Proctors and the better supervision of them, compared with the 3,000 London Attorneys, and limited as they are to one class of business, may possibly ensure a greater degree of accuracy than if the business were thrown open to the whole body.

It must be admitted, that the long experience which the Proctors in London have had in the transaction of the business of the Courts at Doctors' Commons, must afford them considerable facilities in the despatch of business and in detecting irregularities or attempts at fraud. The common form business divided amongst several thousand Solicitors would add but little to their remuneration. Supposing, however, that a satisfactory arrangement can be effected with the practitioners in London, there will be no small difficulty to contend with in regard to the compensation to be made to the officers and practitioners in provincial Courts, in some of which the emoluments are very large.

On the other hand, there is a tendency to consolidate the Courts and offices, to bring them within one general system, and to render the mode of proceeding as far as practicable simple and uniform. As the



Attorneys and Solicitors find no difficulty in practising in all the Courts of Law and Equity, it is contended that they would readily make themselves masters of the Testamentary Jurisdiction, and any practical difficulties in the outset would be readily removed, and the improved forms of proceeding, it is anticipated, would soon work well. The officers of the Court would, of course, be on the alert to detect any irregularity, and require strict evidence of the papers brought into the office, either for administration or probate.

It is contended, of course, that the safeguard which requires every probate and administration to be obtained by a Proctor should be extended to Solicitors, who would be answerable for all the due formalities, according to the practice now adopted at Doctors' Commons, or as it may be further improved.

These hints at a reform in Doctors' Commons, we should like to see expanded into a distinct plan, of which the Profession might clearly and distinctly judge.

With respect to the *Charitable Trusts* Bill, it seems probable, if that measure be adopted, that it will go far to establish a species of new Court, subject to appeal to the Court of Chancery. Care should be taken that a regular body of practitioners should attend the Board, and that rules and regulations should be prepared for the safe and methodical conduct of the business.

The *Public Prosecutors'* Bill proposes a very remarkable alteration in the administration of the Criminal Law. Public Prosecutors are to be appointed, being Barristers of a certain standing, with other Barristers to prepare and advocate prosecutions; and then district agents are to act under them as Attorneys, selected from the body of Attorneys, but not chosen by their own clients the prosecutors. This extraordinary plan can make but little progress in the present Session, but it requires to be watched. It savours of another attempt to introduce official persons in lieu of regular practitioners to transact professional business.

The rival *Bills of Exchange* Bills are still in the Select Committee of the Committee, and we understand there is now a strong contest on the question, whether the "Scotch Diligence" plan can do the work *cheaper* than the other. It is said that the noting, protesting, registering, and serving the parties, is to be limited by the Act to

20s. If so, no Attorney can be engaged in the proceedings. If the Notary and the Registrar will be content with a few shillings, the holder of the bill will have the trouble himself, and cannot charge his loss of time to the defaulter. If the business be properly and carefully done by professional men, there can be no saving of expense compared with the process in the Common Law Courts. Then the costs of proceeding to judgment and execution must be considered. These steps must be taken by an Attorney, unless it is intended to allow any unqualified person to act as agent for the holder of the bill.

On the subject of the *Remuneration of Solicitors*, Lord Lyndhurst on Tuesday last called the attention of the Lord Chancellor to this subject, which he described as of great importance to Solicitors, and not less so to the Suitors of the Court of Chancery. The matter was rendered of still more importance in consequence of a Bill now pending in the other House of Parliament, which would add a very extensive jurisdiction to the Court of Chancery. He was told that his noble friend on the woolsack was about to institute some investigation on the subject, and to introduce some alteration; and if that were so, he (Lord Lyndhurst) should not then give notice of a motion on the subject, as he had intended, but await the result of the inquiry. He wished to know from his noble friend whether the fact was as he had stated; and if so, who were the persons to whom the investigation was to be confided?

The Lord Chancellor said, his noble friend supposed he was about to institute an investigation; but the fact was, that he had already set such investigation on foot. He felt the subject was one of extreme importance. It was of importance to the Solicitor, and it was not less so, as his noble friend had stated, but in fact more important to the suitors of the Court. That the Solicitors were placed in a position that was unsatisfactory, no one could doubt; but it was always found that unsatisfactory as the present was proved to be, it was difficult to discover another that would be more satisfactory. But from time to time certain alterations had been made, and some months ago he requested the Master of the Rolls, who took an interest in the matter, to look into the subject, and see if he could suggest any improvement. He had done so, and having consulted some Solicitors, he made a report, which he (the

Lord Chancellor) received about two weeks ago, on the first day of Term. He found from that report that the Master of the Rolls had investigated the subject very closely, but, hampered as he was with other inquiries, he (the Lord Chancellor) did not like to ask him to pursue the inquiry further. The Master of the Rolls, indeed, said he had so many matters in hand that, although he would not shrink from the investigation, he would rather be released from it. He then had recourse to *Lord Justice Turner* and *Vice-Chancellor Wood*, and put a paper into their hands, and had a conversation with them on the subject. They had very kindly undertaken to make the investigation, and he had united with them one of the Taxing Masters,—*Master Follett*—and put him in communication with them. He had also joined with them *Master Walton*, one of the Masters of the Court of Exchequer, and gave them directions to inquire if they could make any improvement in the scale of fees, or devise any manner in which the scale could be arranged.

#### EXECUTOR AND TRUSTEE BILL.

THE main object of this Private Bill is to effect, for the exclusive benefit of the promoters, a most material change in the public law of the land. According to the law as it now stands, no executor or trustee can be remunerated out of the trust estate for the performance of his office, except by the express direction of the testator or settlor; but if this Bill is permitted to pass into a law, the company proposed to be established for the purpose of undertaking executorships and trusts, will be exclusively authorised to charge any trust estate which they may get into their hands with the payment of a commission to them, the amount of which is only to be limited by their own bye-laws and the sanction of the Treasury; this alteration of the law is so important a part of the whole scheme of the Bill that, unless it be effected, the Bill itself must fall to the ground.

It is believed that any such change in the public law, for the exclusive benefit of an unestablished body, is unprecedented. If the principle of the Bill be admitted, it follows that it is right and proper that all other persons or corporations who are willing to undertake trusts under similar circumstances should also be entitled to charge the trust estates confided to their care with the payment of commission for the risk and

trouble incurred in the execution of the trust.

It is submitted that the Bill ought not to pass unless and until the Legislature shall deem it proper, after full and mature deliberation, to alter the existing law by a general measure applicable to all persons.

If it were necessary to discuss the merits of the proposed establishment of a company for the purpose of undertaking the duties of executors and trustees, the futility of the scheme could easily be demonstrated. If a person is minded to make a will or settlement, he confides the execution of the trust which he is creating to those of his relations or friends in whom he places *the greatest personal confidence*. He has to provide for the guardianship of his children, for their maintenance during minority, for the guardian's consent to the marriage of his daughters, and for a multitude of details which require personal consideration of the various contingencies of life as they arise. Assuming that any existing companies, however highly respected and successful they may be in their respective spheres, were willing to undertake such trusts, would a parent desire that the directors for the time being of such an establishment as the Bank of England, or the Royal Exchange Assurance Company should be the guardians of his children, and should have the control of their education and the selection of schools or tutors for them, or should be entrusted with the discretion of consenting to the marriage of his daughters?

Experience has proved, beyond all question, that the management of public companies is only successful in such branches of business as, from the magnitude of the capital necessarily employed in them, are beyond the compass of individuals, and that in all cases in which private individuals can compete on equal terms with public companies, the former will be the most successful. The business of executorships and trusteeships is essentially that which depends on personal confidence and discretion. It requires no capital whatever. It is that which, of all others, appears to be the most unsuited to the deliberation of a board of directors, who must necessarily be continually shifting and changing. The disclosure and discussion of the private affairs of families, of the amount of their property and of the incumbrances upon it before such a board, would be deprecated by all parties concerned; and yet, without such disclosure and discussion, it is impossible that the

trust can be properly or judiciously executed.

Moreover, the duties and responsibilities cast upon the directors would be inconsistent and conflicting. On the one hand, they would be responsible to their constituents, the company for the most profitable exercise of their powers, which could only be effected by increasing the expense of the management of the trust funds committed to their care; while, on the other hand, they would be responsible to their other constituents, the *cestui que trusts*, to limit that expense as much as possible. It is from the conviction of the impossibility of reconciling these conflicting inducements, that Courts of Equity have laid down the rule, that no trustee shall, under any circumstances, derive pecuniary remuneration for the execution of his trust; and so stringent is the rule, that though solicitors, barristers, bankers, and other agents must necessarily be employed and paid in the management of trusts, yet a trustee acting in any of these capacities, for the purposes of the trust, is debarred from the remuneration for his services which must and would be paid and allowed to him if he were not a trustee.

The very nature of such a society as is proposed by the Bill, and the interest of its managers and servants, will tend to throw every trust coming within its clutches into the Court of Chancery. Professional men know in how large a proportion of trusts there is sufficient to justify a trustee, if he desire it, in putting himself under the protection or guidance of the Court, with a full certainty that the costs he incurs in the proceedings will be repaid to him out of the trust fund. Good feeling, and a desire to save expense to the trust, alone keeps a trustee or his advisers from relieving himself from risk by such a course; but how little likely are such feelings or desire to deter the trust society from taking a step which may be evidently for their own pecuniary benefit!

For these reasons,—and many others might be adduced if it were necessary,—it is submitted that the Bill should not pass into a law.

#### ADMINISTRATION OF OATHS IN CHANCERY. — LIMITING THE POWERS OF SOLICITORS.

By that Statute (16 & 17 Vict. c. 78) the Lord Chancellor was empowered to appoint any persons, practising as solicitors

within ten miles from Lincoln's Inn Hall, to administer oaths and take declarations, affirmations, &c.

In pursuance of this authority, Commissions have been granted to a considerable number of solicitors, residing and practising in different parts of London; certificates being, in each case, laid before the Lord Chancellor as to the respectability and fitness of the person appointed.

This measure has, as was anticipated, greatly promoted the convenience of the public. The necessity which previously existed for going to Chancery Lane for the purpose of making an affidavit or declaration, had long been felt as a serious practical grievance, especially to merchants, men of business, and professional men, who were thus dragged away from their occupations, perhaps at the very busiest period of the day.

An attempt is now being made to limit the beneficial operations of these powers, by means of the clauses above referred to. By these clauses, it is proposed to be enacted, that it shall not be lawful for any Commissioner to administer oaths, or to exercise or perform any of the powers or duties by virtue of his Commission, *at any other place than at his place of business*, except when attending sick persons.

These clauses formed no part of the Bill, as originally framed and brought into the House of Lords by the Lord Chancellor; but they were introduced into the Bill in Committee.

It is submitted that they should not pass. The object of the Bill is stated in its title to be, "To make Provision for the more speedy and efficient Despatch of Business." But, so far from facilitating the despatch of business, these clauses will *diminish existing facilities*, by compelling deponents, in all cases (except sickness), to leave their places of residence or business in search of a Commissioner; whereas, now, the Commissioners will in many cases come to them.

Sickness is the only exception allowed by the proposed enactment; but it is only one of many cases in which the existing law and practice promote the convenience and advantage of the public. To members of the Legislature and of the Government, official persons, bankers, merchants, and men of business, ladies, aged persons, and others, it is an obvious convenience to be spared the necessity of leaving their homes, although not suffering from sickness, when they may have occasion to take an oath or make a declaration.

Affidavits as to important matters are sometimes required from persons who are under no legal obligation to make them, and who are disinclined to go out of their way for the purpose. In such cases, the power which now exists, *but which these clauses will take away*, of bringing a Commissioner to take the deposition, may often be the means of securing valuable testimony which would otherwise be lost.

As a general rule, Commissioners are not to be found at their places of business after six o'clock in the evening. If these clauses should pass, they cannot take affidavits *even at their own residences*, although within the limits of their jurisdiction, after that hour, however urgent the occasion, or to whatever extent the convenience of deponents—in other words, *the advantage of the public*—may be promoted thereby.

Cases may readily be conceived, indeed they are of not unfrequent occurrence, in which all the members of a firm of bankers, merchants, or men of business, perhaps three, four, or five in number, have to join in one affidavit or answer. At present, one Commissioner may attend them at their own place of business, and administer the oath to them all, at one and the same time. If these clauses should pass, they must all leave their places of business, at whatever inconvenience, and resort to that of the Commissioner.

No evil or inconvenience in the existing system is alleged to justify the proposed change. If any should hereafter arise, it is in the power of the Lord Chancellor to remedy it by rule or order; but the proposed enactment would altogether deprive the Lord Chancellor of such corrective and remedial power.

An oath or affirmation can derive no greater sanctity, and can impose no weightier obligation on the conscience of the person taking it, from its being administered in one place of business or residence, rather than another. And if a Commissioner is a fit person to administer an oath in Fleet Street or Cheapside, he cannot be less fit to do so in Cornhill or Lombard Street. In all cases, at present, he must state in the Jurat the place where he actually exercises his power, so that it may at once appear whether he is or is not acting within the limits of his jurisdiction.

To the solicitors themselves, who are Commissioners, the proposed enactment is entirely indifferent. If affidavits or declarations are necessary to be made, and they are not allowed to go to deponents, it fol-

lows that deponents must come to them. But it is *the public* who are really concerned in the matter, and it is their interest and convenience, and not that of the solicitors, which will suffer by the change.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### PURCHASERS' PROTECTION AGAINST JUDGMENTS, &c.

18 VICT. c. 15.

THE preamble recites 1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11; 3 & 4 Vict. c. 82; and 13 & 14 Vict. c. 43, s. 24.

Judgments of the Common Law Palatine Courts of Lancaster and Durham, obtained before the coming into operation of 1 & 2 Vict. c. 110, and not registered under the same, shall not affect lands, &c., in the said counties, unless registered on or before November 1, 1855. The fee for entry of judgments shall be 2s. 6d.; s. 1.

The provisions of the 1 & 2 Vict. c. 110, ss. 18, 19, and 20, extended to the Common Law Palatine Courts, and to the Equity Court of Durham; s. 2.

The provisions of 2 & 3 Vict. c. 11, ss. 3, 4, 5, and 7, and 3 & 4 Vict. c. 82, s. 2, extended to the Common Law and Equity Courts of the Counties Palatine; s. 3.

No judgment, &c. registered under the 3 & 4 Vict. c. 82, to affect lands, &c. as to purchasers, &c. until registered; s. 4.

Purchasers protected against judgments not re-registered; s. 5.

Provision for re-registration explained; s. 6.

Judgments of inferior Courts, when removed, shall be registered; s. 7.

Extinguished judgments not revived; s. 8.

Duties of prothonotary. The fees for registration shall be 2s. 6d., for re-registration 1s., and for searches 1s.; s. 9.

No order of Court of Bankruptcy to affect lands, &c., until registered; s. 10.

Legal estate vested in purchaser or mortgagee not to be taken in execution; s. 11.

Life annuities and rent-charges not to affect lands as to purchasers, &c., until memorandum left with senior Master; s. 12.

Searches may be made by parties themselves; s. 13.

Annuities or rent-charges given by will excepted from this Act; s. 14.

The following are the Title and Sections of the Act:—

An Act for the better Protection of Purchasers against Judgments, Crown Debts, Cases of *Lis pendens*, and Life Annuities or rent-charges. [26th April, 1855.]

Whereas an Act of Parliament was passed in the Session of the 1 & 2 Vict. c. 110, intituled "An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the Laws for the Relief of Insolvent Debtors in England;" and another Act in the Session of the 3 & 4 Vict. c. 11, intituled "An Act for the better Protection of Purchasers against Judgments, Crown Debts, *Lis pendens*, and Fiats in Bankruptcy;" and another Act in the Session of the 3 & 4 Vict. c. 82, intituled "An Act for further amending the Act for abolishing Arrest on Mesne Process in Civil Actions:" And whereas the provisions of the said Acts respecting judgments, decrees, orders, and rules, and *Lis pendens*, ought to include and be applicable to the Counties Palatine of Lancaster and Durham, and the Common Law and Equity Courts thereof respectively: And whereas an Act was passed in the Session of the 13 & 14 Vict. c. 43, s. 24, intituled "An Act to amend the Practice and Proceedings of the Court of Chancery of the County Palatine of Lancaster, by force whereof the said provisions do to some extent include and are applicable to the County Palatine of Lancaster, as far as regards the Court of Chancery thereof: Be it therefore enacted, as follows:—

1. Any judgment of the Court of Common Pleas of the County Palatine of Lancaster, or of the Court of Pleas of the County Palatine of Durham, obtained before the coming into operation of the said Act of the Session of the 1 & 2 Vict. c. 110, and not already registered in the said Courts respectively under the provisions of the same Act, and which shall not be registered in the said Courts respectively under the same provisions as amended by this Act, on or before the 1st day of November, 1855, shall not after that day affect any lands, tenements, or hereditaments in the said Counties Palatine respectively as to purchasers, mortgagees, or creditors, unless and until such memorandum or minute of such judgment as is in the said Act prescribed shall be left with the prothonotary of the Court in which the judgment has been obtained, who shall forthwith enter the same in manner by the same Act as amended by this Act directed in regard to judgments thereby authorised to be registered, and shall be entitled for every such entry to the sum of 2s. 6d.; and the provision for re-registration, *toties quoties*, hereinafter mentioned, as explained by this Act, is hereby extended and applied, *mutatis mutandis*, to judgments registered under this present provision.

2. And be it declared and enacted as follows: The provisions contained in the 1 & 2 Vict. c.

110, ss. 18, 19, and 20, and giving to certain rules of Courts of Common Law, and decrees and orders of Courts of Equity, the effect of judgments in the Superior Courts of Common Law, and constituting the persons therein mentioned judgment creditors, and giving to Courts of Equity the powers by the same Act given to the Judges of the said Superior Courts, and giving to the persons so constituted judgment creditors as aforesaid such remedies as are therein mentioned, and authorising the registration of such decrees, orders, and rules as aforesaid, and providing for the writs to be sued out of Courts of Equity, shall extend and are applicable, *mutatis mutandis*, to the said Counties Palatine and the Courts of Common Law thereof respectively, and to the Court of Chancery of the County Palatine of Durham, within the limits of their respective jurisdictions, to the end that the same law in the respects aforesaid may apply to the Courts of the said Counties Palatine, and the decrees, orders, judgments, and rules thereof, so far as relates to lands, tenements, and hereditaments within the jurisdiction of such Courts respectively, as under the previous Statutes amended by this Act, will regulate the operation of judgments in the Superior Courts of Common Law: But no judgment, decree, order, or rule of any Court shall bind lands, tenements, and hereditaments in the said Counties Palatine respectively, as against purchasers, mortgagees, or creditors, unless and until such memorandum or minute thereof as hereinbefore is mentioned shall be left with the prothonotary of the Palatine Court in which are situated the lands, tenements, and hereditaments intended to be charged thereby.

3. The provisions contained in the 2 & 3 Vict. c. 11, ss. 3, 4, 5, and 7, and in the 3 & 4 Vict. c. 82, s. 2, respecting the particulars to be inserted in the register by the Master, and respecting the re-registration of judgments, decrees, or orders, and rules, and respecting the registration, and re-registration of *lis pendens*, and respecting the protection of purchasers, mortgagees, and creditors, as explained or amended by this Act, shall extend and are applicable, *mutatis mutandis*, to the Counties Palatine and the Courts of Common Law and Courts of Chancery thereof respectively, within the limits of their respective jurisdictions.

4. And whereas the protection afforded to purchasers, mortgagees, and creditors, by the said Act of the 3 & 4 Vict. c. 82, against judgments, decrees, orders, or rules not duly registered, any notice thereof notwithstanding, is confined to judgments, decrees, orders, or rules binding by virtue of the said Act of the 1 & 2 Vict. c. 110: And whereas the docket or register previously in use has been closed, and the said provision ought not to be so restricted: Be it therefore enacted, That no judgment, decree, order, or rule which might be registered under the said Act of the 1 & 2 Vict. c. 110, shall affect any lands, tenements, or hereditaments, at Law or in Equity, as to purchas-



ers, mortgagees, or creditors, unless and until such a memorandum or minute as in the said Act in that behalf mentioned shall have been left with the proper officer of the proper Court, any notice of any such judgment, decree, order, or rule to any such purchaser, mortgagee, or creditor in anywise notwithstanding.

5. And whereas it is expedient that certain doubts which have arisen upon some of the provisions for the protection of purchasers against judgments in the said Acts contained should be removed: Be it therefore declared and enacted as follows: The provision contained in section 2 of the said Act of the 3 & 4 Vict. c. 82, extends and shall be deemed to extend as well to the Act therein referred to as to section 4 of the said Act of the 2 & 3 Vict. c. 11, as explained by this Act, so that notice of any judgment, decree, order, or rule, not duly re-registered, shall not avail against purchasers, mortgagees, or creditors, as to lands, tenements, or hereditaments.

6. Where by the said Act of the 2 & 3 Vict. c. 11, re-registry of judgments, decrees, orders, or rules is required within such period of five years as is therein-mentioned, in order to bind purchasers, mortgagees, and creditors, it shall be deemed sufficient to bind such purchasers, mortgagees, and creditors if such a memorandum or minute as was required in the first instance is again left with the senior Master of the Common Pleas within five years before the execution of the conveyance, settlement, mortgage, lease, or other deed or instrument vesting or transferring the legal or equitable right, title, estate, or interest, in or to any such purchaser or mortgagee for valuable consideration, or as to creditors within five years before the right of such creditors accrued, as directed by the said last-mentioned Act, although more than five years shall have expired by effluxion of time since the last previous registration before such last-mentioned memorandum or minute was left, and so *toties quoties* upon every re-registry.

7. Where by the section 22 of the said Act of the 1 & 2 Vict. c. 110, power is given to remove judgments, rules, or orders obtained in or made by certain Inferior Courts into the said Superior Courts, or into the Court of Common Pleas of Lancaster, as the case may be, no such judgment, rule, or order which has already been or hereafter shall be so removed shall bind any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, unless and until after such removal it shall be re-registered, and, if necessary, re-registered, in like manner as in order to bind such purchasers, mortgagees, or creditors it must have been if originally entered up in one of the said Superior Courts, or in the said Court of Common Pleas of Lancaster, as the case may be; but from and after the passing of this Act every such judgment, rule, or order so registered, and where necessary re-registered, shall be binding in like manner, but not further or otherwise, as other judgments, rules, or orders of the said Superior Courts, or of the said Court of Common

Pleas of Lancaster respectively, and the proviso at the end of the said section 22, restricting the operation of the same is hereby repealed.

8. Nothing herein contained shall extend to revive or restore any judgment which shall be extinguished or barred, or to affect or prejudice any such judgment, or any decree, order, or rule, as between the parties thereto, or their representatives, or those deriving as volunteers under them.

9. For the purposes of any registration or re-registration to be made in pursuance of this Act in either of the said Counties Palatine, all such acts and things as under the provisions of the said several Acts of the reign of her Majesty ought to be done by or left with the Senior Master of the Court of Common Pleas at Westminster shall be done by or left with the prothonotary or deputy prothonotary of the Court of Common Pleas of the County Palatine of Lancaster, or of the Court of Pleas of the County Palatine of Durham, as the case may require, or such other officer (if any) of the same Courts respectively as may for the time being have been appointed by the same Courts respectively, for the purpose of entering the judgments thereof respectively, under the provisions of the said Act of the 1 & 2 Vict. c. 110; and the said prothonotary, deputy prothonotary, or other officer as aforesaid, shall be entitled to the sum of 2s. 6d., and no more, for the duties to be performed on every registration; and the sum of 1s. only for re-registration; and all persons shall be at liberty to search all or any of the books kept in pursuance of any of the foregoing provisions of this Act in each Court, for the sum of 1s.

10. And whereas by the section numbered 123 of the Bankrupt Law Consolidation Act, 1849, when any person admits (in manner therein mentioned) that he is indebted to a bankrupt, it is enacted that every order of the Court of Bankruptcy for the payment by such person of the amount so admitted, and costs (if any), shall have the effect of a judgment in the said Superior Courts, and may be enforced accordingly, and by the section numbered 249 of the same Act it is enacted that the said Court may in all matters before it award costs, and that the like remedies may be had upon an order of the said Court for costs as upon a rule of any of the said Superior Courts for costs, but the said Act does not direct the registration of any such order as aforesaid: Be it therefore enacted as follows: No such order of the Court of Bankruptcy for payment of money or of costs as aforesaid shall affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, unless and until it shall be registered, and if necessary re-registered, in like manner as in order to bind such purchasers, mortgagees, or creditors it must have been if it had originally been a judgment or rule obtained or entered up in one of the said Superior Courts or in the said Palatine Courts respectively, any notice of any such order to any such purchaser, mortgagee, or creditor in anywise notwithstanding.

11. And whereas great delay and expense are occasioned upon purchases and mortgages of lands in consequence of judgments against mortgagees and Crown debts and liabilities to the Crown of mortgagees continuing to bind lands, although the mortgagees have been *bond fide* paid off, and the lands have been actually conveyed to purchasers, or to other mortgagees: For remedy whereof, be it enacted as follows: Where any legal or equitable estate or interest or any disposing power in or over any lands, tenements, or hereditaments shall, under any conveyance or other instrument executed after the passing of this Act, become vested in any person as a purchaser or mortgagee for valuable consideration, such lands, tenements, or hereditaments shall not be taken in execution under any writ of elegit, or other writ of execution, to be sued upon any judgment, or any decree, order, or rule against any mortgagee or mortgagees thereof, who shall have been paid off prior to or at the time of the execution of such conveyance, nor shall any such judgment, decree, order, or rule, or the money thereby secured, be a charge upon such lands, tenements, or hereditaments so vested in purchasers or mortgagees, nor shall such lands, tenements, or hereditaments so vested in purchasers or mortgagees be extended or taken in execution, or rendered liable under any writ of extent or writ of execution or other process issued by or on behalf of her Majesty, her heirs or successors, in respect of any judgment, Statute, or recognisance obtained against or entered into by, or inquisition found against, or obligation or speciality made by, or acceptance of office by any mortgagee or mortgagees, whereby he or they bath or have become or shall become a debtor or accountant, or debtors or accountants to the Crown, where such mortgagee or mortgagees shall have been paid off prior to or at the time of the execution of such conveyance as aforesaid.

12. And whereas by reason of the repeal in the last Session of Parliament of the Act of the 53 Geo. 3, c. 141, requiring the enrolment of life annuities or rent-charges, purchasers are no longer enabled to ascertain by search what life annuities or rent-charges may have been granted by their vendors or others: Be it therefore enacted by the authority aforesaid as follows: Any annuity or rent-charge granted after the passing of this Act, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, shall not affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name, and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the date of the deed, bond, instrument, or assurance whereby the annuity or rent-charge is granted, and the annual sum or sums to be paid, shall be left with the senior Master of the Court of Common Pleas at Westminster, who shall

forthwith enter the particulars aforesaid in a book in alphabetical order by the name of the person whose estate is intended to be affected by the annuity or rent-charge, together with the year and the day of the month when every such memorandum or minute is so left with him, and he shall be entitled for every such entry to the sum of 2s. 6d., and all persons shall be at liberty to search the same book, together with the other books or registers in the office, on payment of the sum of 1s.

13. The searches of the several registers, by the said recited Acts or by this Act authorised to be made for the sum of 1s., may be made by the parties themselves, under proper regulations in the office, and the sum of 1s. only shall be payable on one search, although more names than one shall be searched for, where such names relate to the same purchase, mortgage, or other transaction.

14. The provisions of this Act shall not extend to require the registry of annuities or rent-charges given by will.

## EXTENSION OF THE CHARITABLE TRUSTS' ACT.

[Concluded from page 477.]

18. No order for the appointment or removal of trustees of any charity, or for establishing any scheme for the administration or for apportioning the benefits thereof, shall be made by the board until after such public notices shall have been given of the proposal to make the same as the board may consider expedient for insuring publicity in each parish or district in which the charity is or ought to be applied, or among all persons interested therein, nor until after the expiration of one month from the publication of such notice; and every such notice shall contain (so far as conveniently may be) sufficient particulars of the proposed order to show the objects thereof, and shall prescribe a time within which any objections thereto may be stated or transmitted to the board.

19. All objections which may be made to any proposed order shall be considered by the board, who may suspend the making thereof for further inquiry or may modify the same as may be found expedient; and a copy of every such order when made shall, in the case of any local charity, be deposited for the space of one month in some convenient place within the parish or one of the parishes or the district in which the charity is applicable, and also be open to inspection at the office of the Commissioners, and such publicity shall be given thereto among all persons interested in the charity as the Board shall consider expedient; or if the charity be not local then a copy of such order shall be open to inspection at the office of the Commissioners, and public notice thereof shall be given in such manner as to the board shall seem fit.

20. The Attorney-General, or any trustee or person administering or interested or claiming

to be interested in any charity, the subject of any order of the board made under the foregoing powers, and not being an order for vesting any real or personal estate of the charity in the trustees thereof, or in the official trustees of charity lands or charitable funds, or two inhabitants of any place within which the charity shall be applicable, or any person aggrieved by the same order, may within three months after the publication thereof, but not afterwards, present a petition to the Court of Chancery, in a summary way, appealing against such order and praying such relief as the case may require; and the Court, upon the hearing of such petition, may confirm, vary, reverse, or annul the order appealed against, or remit such order to the board for reconsideration, with or without any declaration in relation thereto, or may make any substitutive or other order in relation to the matter of the appeal, and respecting the costs, charges, or expenses incident thereto, as to the Court may seem just; and the Court, before hearing such petition or during the proceedings thereon, may require from the board the reasons for any order made by them; but no such petition of appeal shall be presented by any person, other than the Attorney-General, until written notice of the intention to present the same shall have been delivered to the Commissioners at their office, under the hand of the appellant or his agent, by the space of 21 days at the least previously.

21. The Attorney-General, if he think fit, may appear *ex officio* as the respondent upon any such appeal not made by himself, and where the Attorney-General shall be the appellant, and in any other case in which he shall not think fit to appear as the respondent the secretary of the Commissioners or any person appointed by them may, by their authority, appear as the respondent; and all such costs, charges, and expenses of the Attorney-General or of the secretary or nominee of the Commissioners, as the Court may direct to be paid, shall be provided and paid out of the property or income of the charity, or both, as the Court may direct.

22. Where any municipal corporation in England or Wales not named in Schedule (A.) or Schedule (B.) of the Act of the 5 & 6 Wm. 4, c. 76, "For the Regulation of Municipal Corporations," or any of the members of such corporation in his or their corporate capacity, shall be seized or possessed either solely or together with any person or persons elected by such corporation or by any particular member or class of members of such corporation of any real or personal estate wholly or partly upon any charitable trusts, and where any corporation sole or aggregate shall be so seized or possessed or shall have the management of any real or personal property of any charity, and shall also be recipients of the benefit thereof, it shall be lawful for the Court of Chancery, upon the petition of any person authorised by the board, or of the Attorney-General, to appoint trustees for the management of the charity, or of any real or personal estate thereof,

and to order that any such real or personal estate shall be vested in or shall be transferred or paid to such trustees, or to the official trustees of charity lands or charitable funds respectively; and any order for vesting any real estate in such trustees or trustee shall be effectual without assurance; and any order for vesting any stock in the public funds or any stock or shares in any public company in the newly appointed trustees, or in the official trustees of charitable funds, may also entitle them to call for a transfer of such stock or shares respectively; and any real or personal estate of which any such corporation or any members thereof shall not be divested, but of which new managing trustees shall be appointed, shall be held upon trust to be disposed of according to the direction of such managing trustees.

23. The secretary for the time being of the board shall be a corporation sole by the name of "The Official Trustee of Charity Lands," for taking and holding charity lands, and by that name, (instead of the name of "Treasurer of Public Charities,") shall have perpetual succession; and all land, or estates or interests in land, now vested in the "Treasurer of Public Charities" by that name, shall become, upon the passing of this Act, and by virtue thereof, vested in like manner, and upon the same trusts, in "The Official Trustee of Charity Lands," and all provisions of the principal Act which have reference to the Treasurer of Public Charities shall operate as if the name of the "Official Trustee of Charity Lands" had been used therein instead of the name of "Treasurer of Public Charities."

24. The managing trustees of every charity shall have at law and in equity power to grant all such leases or tenancies of land belonging thereto, and vested in the official trustee of charity lands, as they would have power to grant in the due administration of the charity if the same land were legally vested in themselves; and all covenants, conditions, and remedies contained in or incident to any lease or tenancy so granted shall be enforceable by and against the trustees or persons acting in the administration of the charity for the time being, and their alienees or assigns, in like manner as if such lands had been legally vested in the trustees granting such lease at the time of the execution thereof, and had legally remained in or had devolved to such trustees or administrators for the time being; their alienees or assigns, subject to the same lease or tenancy.

25. The Lord Chancellor may from time to time by writing under his hand appoint any persons to be the official trustees of charitable funds, and remove any such trustees, and every such appointment or removal shall be published in the *London Gazette*.

26. Such trustees to have perpetual succession, and may hold funds in that name.

27. All stock in the public funds vested in the joint names of Henry Morgan Vane, Thos. Hare, and Walker Skirrow, Esquires, the present official trustees of charitable funds, shall upon the passing of this Act be transferred by

the Governors and Company of the Bank of England from their names to the account of the official trustees of charitable funds.

28. The official trustees to keep a banking account.

29. Mode of drawing on the banking account.

30. As to disposal of principal moneys paid to them.

31. Payments to the banking account, how to be made.

32. For the regulation of transfers and payments to or by the official trustees.

33. Copies of orders affecting the account of the official trustees to be sent to the board.

34. Board may make orders for restraining transfers of stock, &c., which are to have the effect of a distringas.

35. Indemnity to the bank and others.

36. It shall not be lawful for any trustees or persons acting in the management of a charity to grant without the approval of the board any lease of the charity lands in reversion after more than three years of any existing lease, or for any term of life, or in consideration, wholly or in part, of any fine.

37. So much of section 21 of the principal Act as requires a compulsory provision to be inserted in every mortgage for the payment of the principal money borrowed by annual instalments and for the redemption and reconveyance of the mortgaged estates within the period of not more than 30 years, is hereby repealed; but the board authorising any mortgage to be made of any charity estate may, by the same or any other order, direct the trustees of the charity to discharge the principal debt, or any part thereof, by equal yearly instalments within 30 years from the date of the security, or to form an accumulation or sinking fund out of the income of the charity for discharging the principal debt, or any portion thereof, within the same period, and may give any directions as to the investment and accumulation of such fund, and the trustees for the time being of the charity shall carry such order into effect.

38. The 23rd section of the principal Act shall extend to authorise a compromise or adjustment of any claim, demand, or cause of suit against any charity or the trustees or administrators thereof, and the order of the board in relation thereto shall have the like effect as in the case of any compromise or adjustment for which provision is made by the said section; and the board may at any time by their order refer any claim, demand, or cause of suit which they might authorise the trustees of the charity to compromise or adjust to arbitration, under such terms and subject to such conditions as they may consider expedient; and every order of reference to arbitration made by the board, and by which the adverse claimants shall agree to abide, shall be as binding on the trustees or administrators of the charity, as well as such adverse claimants, as if an agreement to the same effect between the same trustees or administrators and adverse

claimants were made a rule of the Court of Chancery, and may be enforced accordingly.

39. The board upon the application of the trustees or persons acting in the administration of any charity may authorise a partition of any land whereof any undivided share shall belong thereto, and the receipt or payment of any money for equality of partition, and may give any directions in relation thereto and for securing the due investment or disposal of any money to be received for equality of partition, which directions the trustees or administrators of the charity shall carry into effect.

40. Board may authorise payments for equality of exchange or partition.

41. Exchanges of partitions authorised as under the General Inclosure Act.

42. Notice to be given of exchange and partitions.

43. Where there shall be uncertainty as to the specific part of any estate out of which any rent, annuity, or other periodical payment, not exceeding the yearly sum of 10*l.*, charged upon some part of the same estate, for the benefit of a charity shall be payable, it shall be lawful for the board, upon the application of the trustees or persons acting in the administration of the charity, or of any person interested according to the aforesaid definition of "persons interested" in the same estate to determine by their order the land charged with such rent, annuity, or other periodical payments, which shall thenceforth stand charged with such rent, annuity, or periodical payment accordingly, to the exoneration of the residue of such estate therefrom; and such order shall be valid and effectual notwithstanding any infirmity of estate or defect of title of any person on whose application the same shall have been made.

44. Expenses of exchanges and partitions and determining application of charges.

45. Incorporated charities and trustees for charities may re-invest in land.

46. Order of board for investments to be carried into effect, and costs to be raised.

47. Leases, &c., to be valid, notwithstanding disabling acts.

48. The board may order the bill of costs or charges claimed by any attorney or solicitor on account of business conducted or transacted by him on behalf of any charity or the trustees thereof to be examined and taxed by the Taxing Masters of the Court of Chancery, or by the proper taxing officers of any of the Superior Courts at Westminster, who shall proceed to examine and tax the same bill accordingly; and if the same shall be reduced upon such taxation by the amount of one-sixth part or more of the amount thereof, the costs of the taxation shall be paid by such attorney or solicitor, but otherwise out of the funds of the charity by the trustees thereof: And the board may order any such bill to be so taxed, notwithstanding that the same may have been paid by the trustees of the charity at any period not more than six calendar months previously to such order, and any amount taxed of any such paid bill shall be a debt due from the attorney:

or solicitor to the trustees of the charity, and shall be forthwith paid by him to such trustees accordingly.

49. Amendment of s. 27 of principal Act.

50. Deeds and documents relating to charities may be enrolled at the office of the board, and copies of enrolment to be evidence.

51. Office of the Commissioners substituted for the office of Registrar of County Courts judgments for the purposes of sect. 55 of principal Act.

52. Section 61 of "The Charitable Trusts Act, 1853," except so much thereof as enacts that the trustees or persons acting in the administration of every charity shall, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such charity, shall be repealed as to all accounts which such trustees or administrators shall not have been bound to render before the passing of this Act; and the trustees or administrators of every charity shall on or before the 25th day of March in every year, or such other day as may be fixed for that purpose by the board, or as may have been already fixed for rendering the accounts thereof required by the principal Act, prepare and make out the following accounts in relation thereto; (that is to say,)

- (1.) An account of the endowments of the charity, showing in the case of realty not in hand the manner in which the same is let or occupied, and in the case of personalty the existing investment or employment thereof, and in what names such investments are made, and showing the gross income arising or which ought to have arisen from the said endowments during the year ending on the 31st day of December then next preceding, or on such other day as may have been fixed by the board in this behalf:
- (2.) An account of all balances in hand at the commencement of the year, and of all moneys received during the same year on account of the charity, with the dates of such receipts, and a statement of deductions and allowances, if any, from the gross amount:
- (3.) A particular account for the same period of all payments with the date of such payments:
- (4.) An account of all moneys owing to or from the charity:

Which accounts shall be certified under the hand of one or more of the said trustees or administrators, and shall be audited by the auditor of the charity, if any; and the said trustees or administrators shall, within 14 days after the day appointed for making out such accounts, deliver or transmit, free of charge, one copy thereof to the Commissioners at their office in London, and one copy thereof to the clerk of the County Court or each County Court within the district of which the charity is applicable, or (where the charity is applicable

in the districts of more than one County Court), then to the clerk or clerks of such one or more of the same Courts as the board may direct and where the charity is applicable in the city of London or the liberties thereof, or any adjoining precincts or extra-parochial places not within the jurisdiction of a County Court, then to the clerk of the Sheriffs' Court of London having jurisdiction under the provisions of "The London (City) Small Debts Extension Act, 1852;" and every copy received by the clerk of any County Court, or of such last-mentioned Court, of such accounts, shall be kept and registered by him without fee or reward, and shall be open to the inspection of all persons, at all reasonable hours, on payment of 1s. for every such inspection, and any person may require a copy of every such account, or of any part thereof, on paying therefor to the clerk in whose custody it shall be after the rate of 2d. for every 72 words or figures.

53. Board may make orders as to delivery and publication of account by trustees, and as to the form thereof.

54. Trustees wilfully omitting to make returns of account to be deemed guilty of a contempt of Court of Chancery.

55. Every trustee or person acting in the administration of any charity who or whose known agent in the administration thereof shall receive from the board a notice to set out, deliver, or transmit any account required by this Act, or by any order in force in relation to such accounts, and who shall not fully comply with the same notice within such reasonable period as shall be fixed by the board, shall be deemed to have wilfully omitted to comply with such requirements, and proof that such notice addressed to such trustee or person, or to such his known agent at the usual place of abode of the person so addressed was put into some post office, shall be *prima facie* evidence of the due receipt of the notice by the person so addressed.

56. The exemption contained in the 62nd section of the principal act of voluntary subscriptions by which any charity may be wholly or partially maintained, and of donations and bequests applicable as income in aid of such voluntary subscriptions, and of portions of such donations, bequests, and voluntary subscriptions appropriated and invested for any defined and specific object or purpose as therein expressed from the provisions of that Act, shall not henceforth extend to any real estate or stock in the public funds or of any public company, securities, or other investments of the like permanent nature, on which any such exempted funds shall be laid out.

57. The 64th section of the principal Act shall apply as well to members of any charity within the operation of that Act as to members of any charity exempted from the operation thereof.



## QUESTIONS AT THE EXAMINATION.

Easter Term, 1855.

### I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any, and what, law lectures?

### II. COMMON LAW AND PRACTICE OF THE COURTS.

5. Can an infant maintain an action, and how?
6. Is it necessary in any, and what, cases, previous to commencing an action, to give notice to the defendant? And what will be the consequences at the trial of omitting to give such notice?
7. When a party has a lien on deeds to secure the payment of a debt, and the debt becomes barred by the Statute of Limitations, does the lien continue, or is it at an end?
8. When a married woman is sued as a *feme sole*, and she pleads her coverture, and a verdict is found for her, is she entitled to any, and what costs?
9. Has any, and what, alteration been recently made as to the form of affidavits; and if the alteration is not adopted, in what way will the costs be affected?
10. When a party gives a warrant of attorney, by whom must it be attested, and what must the attestation state?
11. When an attesting witness to the execution of a deed is dead, how is the execution to be proved?
12. State the usual evidence to recover a debt for goods, when the general issue only is pleaded?
13. When the sheriff, having seized goods under an execution, receives notice from the landlord that rent is due, and notwithstanding removes the goods without paying such rent, has the landlord any, and what, remedy?
14. When several actions are brought against different underwriters on the same policy, can they take any, and what, steps, to save unnecessary expense?
15. A cause having been tried, after what time can the successful party enter up judgment, and what power has the Judge to shorten or to delay the period for so doing?
16. A plaintiff has reason to think that property of a defendant is in the hands of a third party, what proceedings should he adopt to ascertain the particulars of it, and to obtain it?
17. A plaintiff or defendant prior to the trial of a cause, wishes to ascertain facts which he believes to be in the knowledge of the opposite party, what proceedings should he adopt to do so?
18. By the Common Law Procedure Act,

1854, in what cases are new powers given for obtaining the opinion of a Court of Error?

19. In an action on a mortgage-deed, where the only plea is *non est factum*, can the defendant go into evidence that the deed was obtained by fraud, or that the consideration money was not paid?

### III. CONVEYANCING.

20. What are the usual limitations to bar dower of a person married before the Dower Act (3 & 4 Wm. 4, c. 105); and why are such limitations effectual to bar dower?
21. If land be limited by grant or lease and release to A. and his heirs to the use of B. and his heirs to the use of C. and his heirs, what will A., B., and C. respectively take?
22. If a person be desirous of giving land to a charity, how can he effect his object?
23. Land is by deed limited to the use of A. for life, with remainder to B. in fee—B. dies having by another instrument—namely, by his will, devised the land (subject to A.'s life estate) to C. in tail with remainders over. A. is still living, C. is desirous of barring his estate tail.—State whether there is any protector of the settlement whose consent is necessary in order to enable C. to bar the estate tail.
24. What is a *lis pendens*, and where must a memorandum thereof be registered in order to affect a purchaser of land?
25. A. having married after the Dower Act (3 & 4 Wm. 4, c. 105) purchased, and was duly admitted to copyhold lands; and by a deed executed by him, declared that his widow should not be entitled to dower out of such copyhold lands. Will the widow be barred of her customary dower out of such copyhold lands by such deed?
26. A. by his will, gives to B. a power to appoint a sum of money to all, or some, or one of his (B.'s) children, as B. may think fit. B. has several children—one of such children dies in B.'s lifetime, leaving children being B.'s grandchildren. Is B. authorised under such power to appoint any part of the money to such his grandchildren, or any of them?
27. What is the rule with respect to furnishing attested copies of title-deeds to a purchaser in the absence of special conditions of sale?
28. How are lands settled when they are said to be settled in "strict settlement?"
29. In a mortgage in fee, to three persons with a power of sale—state the proper words, designating to whom such power should be reserved.
30. If a lessee assign his lease, has the assignment any effect upon his covenants with his lessor?
31. What are the requisites for a due execution and attestation of a will, and how may a will be cancelled? The revocation of a will by making another will, or by a codicil, is not intended to be referred to in this question.
32. If A. claims to be heir at law, as the eldest son of B., what evidence is necessary to prove the heirship?
33. In a sale of land by trustees, what

covenants can be required of them in the conveyance?

34. In a sale of copyhold lands, upon whom does the expense of the surrender and admittance fall?

#### IV. EQUITY AND PRACTICE OF THE COURTS.

35. What are the principal matters in which Courts of Equity have exclusive jurisdiction?

36. In what cases is a remedy afforded both at Law and in equity?

37. In what cases will the Court set aside a deed or contract?

38. When will the Court not enforce a contract for specific performance?

39. What acts are considered as part performance of a contract, so as to take a case out of the Statute of Frauds?

40. Are there any, and what, cases in which evidence of constructive notice of an incumbrance will be deemed sufficient?

41. In what cases will, or will not, equity relieve against the forfeiture of a lease by breach of covenant?

42. By what means can trustees obtain protection in the execution of the trust?

43. On the sale of trust property, can the trustees in any, and what, circumstances, become purchasers?

44. To what cases is the new practice of filing claims, instead of bills, applicable?

45. What is the mode of defence to a claim?

46. State some of the usual proceedings before a Judge at Chambers, under the recent Statute and Orders of Court.

47. What power of appealing against a decree or order has a party to a suit in Chancery?

48. Describe some of the proceedings in a suit which are termed "interlocutory."

49. On what grounds can a writ of *ne exeat* regno be obtained?

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

50. By what Act are the several statutory provisions relating to bankrupts consolidated? and give the short title to the Act.

51. State in general terms the description of persons liable to become bankrupt.

52. What description of dealing is requisite to constitute a trading within the meaning of the Statute?

53. Enumerate the principal acts of bankruptcy, and state whether such acts must be done with any, and what, intention?

54. Is an assignment of all the traders' property necessarily an act of bankruptcy, or by what means may it be prevented from becoming such?

55. If you were instructed by a creditor to make his debtor a bankrupt, what steps must you take to obtain adjudication of bankruptcy?

56. If such debtor had not committed an act of bankruptcy are there any proceedings by which the creditor could obtain either payment or security for his debt, or an adjudication of bankruptcy against the debtor? if so, describe them.

57. Are there any, and what, means by which the attendances of witnesses to prove trading and an act of bankruptcy can be enforced?

58. What amount of debt is requisite to enable a creditor to petition for adjudication?

59. Can a trader take any, and what, steps in order to make himself a bankrupt?

60. What effect has the bankruptcy upon warrants of attorney, cognovits, and consents to Judges' orders, given by traders?

61. If the bankrupt has in his possession at the time of his bankruptcy the property of another, with his consent, what effect has the bankruptcy thereon?

62. Does a bankrupt after bankruptcy continue liable to the rent or covenant in leases, or what steps must he take to relieve himself from such liability?

63. If all the parties to a bill of exchange become bankrupt, to what extent can the holder prove on and receive dividends out of their respective estates?

64. What are the respective rights of joint and separate creditors as to the proof of debts under an adjudication against partners in trade?

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

65. Define a crime. How does it differ from a civil injury?

66. What is the distinction between a felony and a misdemeanour? If a prisoner is indicted for a misdemeanour, and the evidence shows that he was guilty of a felony, what is the proper course to adopt?

67. Define the offence of simple larceny. What is the distinction between simple and compound larceny?

68. What changes have been made by modern Statutes with respect to the subject-matter of larceny?

69. Is it necessary to describe in an indictment the nature of the property stolen? When may a variance in this respect be amended?

70. In whom should the ownership of stolen property be laid when they were stolen from a bailee or servant of the owner?

71. How many distinct acts of stealing may be charged in one indictment, and within what period must they have been committed?

72. Define the offence of embezzlement. In what respects does it differ from larceny?

73. Can a person who obtains money by means of a false statement respecting some future event be indicted?

74. Can a person be indicted for obtaining money under false pretences for an alleged charitable object?

75. In an indictment for obtaining property by false pretences, is it necessary to state to whom the property belonged? or whom the prisoner intended to defraud?

76. Will the alteration of a genuine instrument amount to forgery? If so, under what circumstances?

77. To what Superior Court can an indictment be removed, and how?

78. How can a settlement be acquired, by renting a tenement, or by paying rates and taxes?

79. How long residence in a parish makes a pauper irremovable? Before what event is the period of residence computed, and what times are to be excluded from such period?

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

### PROCEEDINGS AT THE EIGHTH ANNUAL GENERAL MEETING.

HELD 18TH APRIL, 1855.

*Mr. E. S. Bailey* in the Chair.

THE *Secretary* read the Report and the Annual Balance Sheet.

*Resolved*,—1. On the motion of *Mr. Powell*, of Birmingham, seconded by *Mr. A. P. Bower*, of London,

That the Report of the Committee of Management be received and adopted, and that it be printed and circulated, under the direction of the Committee.

*Resolved*,—2. On the motion of *Mr. Summerscales*, of Oldham, seconded by *Mr. Lett*, of London,

That the cordial thanks of the Association be presented to the Committee of Management for their labours during the past year.

*Resolved*,—3. On the motion of *Mr. A. Ryland*, of Birmingham, seconded by *Mr. Statham*, of Liverpool,

That the following Members of the Association be elected Members of the Committee of Management for the ensuing year:—

*Chairman*—*Mr. T. H. Bower*.

*Deputy-Chairmen*—*Mr. J. Sangster* and *Mr. W. S. Cookson*.

#### *Metropolitan Solicitors.*

<i>Mr. J. Anderton</i>	<i>Mr. W. S. Cookson</i>
" <i>R. Baynes Armstrong</i>	" <i>F. N. Devey</i>
" <i>E. S. Bailey</i>	" <i>Charles Druce</i>
" <i>Keith Barnes</i>	" <i>E. W. Field</i>
" <i>James Beaumont</i>	" <i>J. S. Gregory</i>
" <i>William Bell</i>	" <i>Henry Karalake</i>
" <i>E. Benham</i>	" <i>T. Kennedy</i>
" <i>George Bower</i>	" <i>H. Lake</i>
" <i>J. Bridges</i>	" <i>Edw. Lawrance</i>
" <i>James Burchell</i>	" <i>C. J. Palmer</i>
" <i>E. F. Burton</i>	" <i>W. H. Palmer</i>
" <i>Henry C. Chilton</i>	" <i>J. J. J. Sudlow</i>
	" <i>John Young</i>

#### *Provincial Solicitors.*

<i>Mr. T. F. Champney, Beverley</i>
" <i>C. Ingleby, Birmingham</i>
" <i>A. Ryland, Birmingham</i>
" <i>W. J. Unett, Birmingham</i>
" <i>S. Clarke, Brighton</i>
" <i>W. Kennett, Brighton</i>
" <i>H. Verrall, Brighton</i>
" <i>W. J. Williams, Brighton</i>
" <i>J. Greene, Bury St. Edmunds</i>
" <i>J. Sparke, Bury St. Edmunds</i>
" <i>T. Wilkinson, Canterbury</i>
" <i>H. T. Sankey, Canterbury</i>
" <i>John Nanson, Carlisle</i>

*Mr. F. Potts, Chester*

" <i>R. Raper, Chichester.</i>
" <i>R. T. Brockman, Folkestone</i>
" <i>John Burrup, Gloucester</i>
" <i>R. R. Wilkinson, Gosport</i>
" <i>F. L. Bodenham, Hereford</i>
" <i>John Hill, Hull</i>
" <i>Thomas Holden, Hull</i>
" <i>J. A. Jackson, Hull</i>
" <i>William Henry Moss, Hull</i>
" <i>C. H. Phillips, Hull</i>
" <i>G. L. Shackles, Hull</i>
" <i>George Stamp, Hull</i>
" <i>Thomas Thompson, Hull</i>
" <i>S. B. Jackaman, Ipswich</i>
" <i>John Sharp, Lancaster</i>
" <i>J. Atkinson, Leeds</i>
" <i>Robert Barr, Leeds</i>
" <i>John Bulmer, Leeds</i>
" <i>J. H. Shaw, Leeds</i>
" <i>T. Avison, Liverpool</i>
" <i>M. D. Lowndes, Liverpool</i>
" <i>R. A. Payne, Liverpool</i>
" <i>H. H. Statham, Liverpool</i>
" <i>James O. Watson, Liverpool</i>
" <i>E. A. Bromehead, Lincoln</i>
" <i>J. Case, Maidstone</i>
" <i>J. F. Beever, Manchester</i>
" <i>J. Crossley, Manchester</i>
" <i>N. Earle, Manchester</i>
" <i>James Street, Manchester</i>
" <i>J. Sudlow, Manchester</i>
" <i>Thomas Taylor, Manchester</i>
" <i>G. Thorley, Manchester</i>
" <i>William Crighton, Newcastle-upon-Tyne</i>
" <i>William Skipper, Norwich</i>
" <i>H. B. Campbell, Nottingham</i>
" <i>R. Enfield, Nottingham</i>
" <i>W. Hunt, Nottingham</i>
" <i>W. Minchin, Portsea</i>
" <i>J. Howard, Portsmouth</i>
" <i>Joseph Peers, Ruthin</i>
" <i>J. Webster, Sheffield</i>
" <i>J. R. Wilson, Stockton</i>
" <i>T. Burn, jun., Sunderland</i>
" <i>W. Beaumont, Warrington</i>
" <i>John Lewis, Wrexham</i>
" <i>Thomas Hodgson, York</i>
" <i>George Leeman, York</i>
" <i>G. H. Seymour, York.</i>

*Resolved*,—4. On the motion of *Mr. Beever*, of Manchester, seconded by *Mr. Kennedy* of London,

That the best thanks of the Association be presented to *Mr. Bromley* for his services as Auditor, and that he and *Mr. A. P. Bower* be requested to accept the same office for the ensuing year.

*Resolved*,—5. On the motion of *Mr. A. P. Bower*, seconded by *Mr. Summerscales* of Oldham,

That a list of all subscriptions due for more than year be laid on the table at every yearly meeting.

That every member who has not paid his subscriptions for two years besides the current year shall, after one month's notice to him, be erased from the list of subscribers,

but that a subscriber who pays up the arrears may be re-instated.

That no member who has ceased to be a member by non-payment of subscription shall be allowed to renew his membership without paying up his arrears, or obtaining the consent of the Committee.

*Resolved*,—6. On the motion of Mr. Shaw, of Leeds, seconded by Mr. Field, of London,

That it be referred to the Managing Committee to inquire into, and specially report upon the causes that have prevented the results of the Society from being commensurate with the importance of the subjects with which it deals, and to suggest the best

remedy for such causes, with power to associate any other members of the Association with themselves for the purposes of such inquiry and report.

*Resolved*,—7. On the motion of Mr. Beever, seconded by Mr. Shaw,

That the cordial thanks of the meeting be given to Mr. Shaen, the Secretary of the Association, for his valuable and useful services in support of the interests of the Association.

*Resolved*,—8. On the motion of Mr. Shaw, seconded by Mr. Thorley, of Manchester,

That the best thanks of this meeting be presented to Mr. E. S. Bailey for his able conduct in the Chair.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Vice-Chancellor Stow.

*Watson v. Loveday.* April 19, 1855.

EQUITY JURISDICTION IMPROVEMENT ACT.—ABATEMENT BEFORE HEARING.—SUPPLEMENTAL CLAIM.

*Where the plaintiff to a creditors' claim died before the hearing, held that a supplemental claim was required, and not an order to revive under the 15 & 16 Vict. c. 86, s. 52.*

This was an application under the 15 & 16 Vict. c. 86, s. 52, for an order to revive this creditors' claim upon the death of the plaintiff before hearing.

*Here in support.*

The Vice-Chancellor said, that a supplemental claim must be filed, as the section in question had reference to an abatement after decree.

<sup>1</sup> Which enacts, that "Upon any suit in the said Court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive or of the usual supplemental decree may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability; and an order so obtained, when served upon the party or parties who according to the present practice of the said Court would be defendant or defendants to the bill of revivor or supplemental bill, shall from the time of such service be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the said Court; and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the office of the Clerks of Records and Writs, within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or

supplemental bill filed against him; provided that it shall be open to the party or parties so served, within such time after service as shall be in that behalf prescribed by any general

*In re Bloy.* April 28, 1855.

TRANSFER OF STOCK FROM NATIONAL DEBT COMMISSIONERS.

*Order on petition for the transfer of stock and payment of dividends transferred to the National Debt Commissioners at the expiration of three months from the petition and on the insertion of the proper advertisements.*

This was a petition for the transfer of 100*l.* in the 3½ per cents. which had been transferred in 1851 to the Commissioners for the Reduction of the National Debt. It appeared that in May, 1841, a lady of the name of Louisa Bloy had called on the petitioners, who were stock-brokers, and instructed them to purchase for her the above amount of stock, and she described herself as of Oxford Street. The stock was thereupon purchased by the petitioners, but Miss Bloy never paid the money, and in 1841 they obtained a *distringas* on the stock.

*Smythe*, in support, referred to the 8 & 9 Vict. c. 62; *Wickens* for the Commissioners.

The Vice-Chancellor made an order for the transfer of the stock and payment of the dividends, upon the insertion of the proper advertisements, and on the expiration of three months from this application.

order of the Lord Chancellor, to apply to the Court by motion or petition to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill, stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon: Provided also, that if any party so served shall be under any disability other than coverture, such order shall be of no force or effect as against such party until a guardian or guardians *ad litem* shall have been duly appointed for such party, and such time shall have elapsed thereafter as shall be prescribed by any general order of the Lord Chancellor in that behalf."

## Court of Queen's Bench.

In re *W. H. Barber*. April 17; May 1, 1855.

ATTORNEY.—RENEWAL OF CERTIFICATE.—  
RULE NISI.

*Rule nisi granted for the renewal of the certificate of an attorney, where two former applications had been refused, on the understanding that the rule was to be argued upon the ground of new matter disclosed by the affidavits in support.*

THIS was a motion for a rule nisi to renew the certificate of an attorney.

Sir Fitzroy Kelly and Macnamara in support.

*Cur. ad. vult.*

LORD Campbell said,—"In the matter of Barber, we have looked at the affidavits, and we think the rule should be granted to show cause. It is granted on this express understanding, only in respect of any new matter which can be shown to be disclosed by the affidavits. When the matter was the second time before the Court, and we refused the rule to show cause, we gave the clear intimation that that was to be considered as final. In spite of that, we are now told that there is new matter since that discovered. We gave permission for the application being renewed, but it was on the express condition that it should be confined to matter subsequently discovered,—the rule was accepted upon that condition, and when cause comes to be shown, we wish it to be understood that it is to be argued on the ground whether there is new matter disclosed by the affidavits which ought to alter the opinion which the Court before formed and expressed."

*Graves v. Humphreys*. April 19, 1855.

COMMON LAW PROCEDURE ACT.—STRIKING OUT DEFENDANT'S NAME AT TRIAL.

*On the trial of an action by an attorney against two defendants, one of whom had suffered judgment by default, the retainer was proved to be by the other alone, and thereupon the name of the former defendant was struck out; Held, that the Judge had power to make such amendment under the 15 & 16 Vict. c. 76, s. 37.*

THIS was a motion, pursuant to leave reserved, for a rule nisi, to enter a nonsuit in this action, which was brought by an attorney to recover the amount of his bill of costs against two defendants, one of whom suffered judgment by default. It appeared on the trial that the plaintiff was retained by the other defendant alone, and the Judge thereupon amended the record by striking out the name of the second defendant.

By the 15 & 16 Vict. c. 76, s. 37, it is enacted, that "it shall and may be lawful for the Court or a Judge in the case of the joinder of too many defendants in any action on contract, at any time before the trial of such cause, to order that the name or names of one or more of such defendants be struck out, if it shall appear to such Court or Judge that in-

justice will not be done by such amendment; and the amendment shall be made upon such terms as the Court or Judge, by whom such amendment is made, shall think proper; and in case it shall appear at the trial of any action on contract that there has been a misjoinder of defendants, such misjoinder may be amended, as a variance, at the trial, in like manner as the misjoinder of plaintiffs has been hereinbefore directed to be amended, and upon such terms as the Court or Judge, or other presiding officer, by whom such amendment is made, shall think proper."

*Atherton* in support.

The Court said, that the judgment by default became a mere nullity on the defendant's name being struck out, and the Statute should receive a liberal construction. The rule would therefore be refused.

## Queen's Bench Practice Court.

(Coram Coleridge, J.)

*Chambers v. Wild*. May 2, 1855.

COSTS IN ACTION ABOVE 20L., WHERE LESS PAID INTO COURT AND ACCEPTED.

*In an action to recover a sum exceeding 20l., the defendant paid 8l. into Court, which the plaintiff took out in full satisfaction of his debt: Held, refusing a rule to set aside the Master's allocatur, that the plaintiff was entitled to his costs.*

THIS was a motion for a rule nisi to set aside the Master's allocatur allowing the plaintiff his costs in this action, which was brought to recover a sum exceeding 20l., but in which the defendant had paid 8l. into Court and the plaintiff had taken the same out in full satisfaction of his debt.

*Cur. ad. vult.*

The Court said, that four of the other Judges had held that the plaintiff was entitled to his costs, and the rule would accordingly be refused.

## Court of Common Pleas.

*Clarke v. Arden*. April 27, 1855.

COPYHOLDS.—PURCHASE FROM ASSIGNEES OF BANKRUPT.—LEASE UNDER LICENSE.

*The defendant purchased certain copyhold property of the assignees of a bankrupt, and which were leased to a tenant with the license of a former lord of the manor. The bankrupt refused to attend the Court baron, and disclaimed his tenancy by letter. The defendant also refused to be admitted and pay the fine. In an action of ejectment by the lord: Held, that as the lease was a valid subsisting one, he was not entitled to recover possession.*

THIS was a rule nisi to set aside the verdict for the defendant, and for a new trial of this action of ejectment. On the trial before Coleridge, J., it appeared that the defendant had purchased certain copyhold property from the assignees of a bankrupt, which had been let on lease with the license of a former lord of the manor, and that on such bankrupt being sum-

moned to attend a Court Baron, he refused to do so and disclaimed his tenancy by letter. The defendant also refused to attend to be admitted and pay the fine of 313l., whereupon this action was brought.

Channell, S. L., and Lush showed cause against the rule, which was supported by Bramwell and Petersdorff.

The Court said, that a licence to demise amounted to a confirmation of a lease granted thereunder, and it was open to the defendant to show, that as there were valid leases subsisting, the plaintiff was not entitled to possession, and he must recover by the strength of his own title and not by the weakness of the defendant's. The rule would therefore be discharged.

### Court at Eschequer.

*Wilkinson v. Sharland.* May 1, 1855.

COMMON LAW PROCEDURE ACT, 1852.—AMENDMENT OF DECLARATION.—ACTION FOR FREIGHT.—“MONEY PAYABLE.”

*In an action for freight, the plaintiff omitted the words “money payable,” as directed by Schedule B. to the 15 & 16 Vict. c. 76, but the defendant, instead of demurring, pleaded over, and on the trial the plaintiff obtained a verdict. The defendant then moved in arrest of judgment, and on the motion being refused, brought error, which was pending: Held, that the Court had, notwithstanding, power to make the amendment on payment of all costs.*

THIS was a rule nisi for leave to amend the declaration in this action, which was brought to recover freight, and in which the words “money payable” were omitted, as directed by Schedule B. to the 15 & 16 Vict. c. 76, and which directs, that “these words ‘money payable by the defendant to the plaintiff’ should precede money counts like 1 to 14,” but need only be inserted in the first.” The defendant, instead of demurring, pleaded over, and on the trial the plaintiff obtained a verdict. A motion had been refused to arrest the judgment, from which decision the defendant brought error, which was now pending.

Knowles and Udall showed cause against the rule, which was supported by Watson and Channell.

The Court held that they had jurisdiction, notwithstanding, to make the amendment, and that it ought to be allowed upon payment of all costs; and the rule was accordingly made absolute.

*Johnson v. Diamond.* May 2, 1855.

ATTACHMENT OF DEBTS UNDER COMMON LAW PROCEDURE ACT, 1854.

*The defendant gave a bond to a person, conditioned for the payment of the costs of an action he was to bring against the plaintiff in the event of his nonsuccess. The action failed, and the present plaintiff's costs amounted to 190l. odd: Held, on*

*demurrer to a declaration under the 17 & 18 Vict. c. 125, s. 64, that the plaintiff could not attach such bond debt, as the bond was only a covenant of indemnity, and not an acknowledgment of a specific debt.*

THIS was a demurrer to a declaration under the 17 & 18 Vict. c. 125, for the purpose of attaching a bond debt alleged to be due from the defendant to the debtor of the plaintiff. It appeared that the bond had been given by the defendant to the debtor on bringing an action against the plaintiff, and that it was conditioned for the payment by the present defendant of the costs therein in the event of the debtor being unsuccessful. The action failed, and the amount of the plaintiff's costs was 190l. odd.

By the 64th section of the Common Law Procedure Act, 1854, it is enacted, that “if the garnishee disputes his liability, the Judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee by writ, calling upon him to show cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment debtor, if less than the judgment debt, and for costs of suit; and the proceedings upon such writ shall be the same, as nearly as may be, as upon a writ of revivor issued under the Common Law Procedure Act, 1852.”

Kingdon in support of the demurrer; Maynard and Slade contra.

The Court said, that the bond was only a covenant to indemnify, and was not an acknowledgment of a specific debt, and did not come within the Act.<sup>1</sup> The defendant was therefore entitled to judgment.

### Crown Cases Reserved.

*Regina v. Keith.* April 28, 1855.

FORGING PART OF BANK NOTE.—CONVICTION.

*The prisoner had obtained a 1l. note of a banking company and cut out the centre and ornamental portions and taken them to be engraved: Held, that he was properly convicted on an indictment for forging part of what purported to be a note for the payment of money issued by a banking company under the 11 Geo. 4, and 1 Wm. 4, c. 66, s. 18.*

<sup>1</sup> Sect. 61 enacts, that “it shall be lawful, for a Judge, upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his attorney stating that judgment has been recovered, and that it is still unsatisfied and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt.”

<sup>1</sup> The count for freight is No. 13.

THIS was an indictment against the prisoner for forging part of what purported to be a note for the payment of money issued by a banking company under the 11 Geo. 4, and 1 Wm. 4, c. 66, s. 18.<sup>1</sup> It appeared that he had obtained a 1l. note of the British Union Banking Company, and cut out the centre and ornamental portions and taken the same to an engraver to be engraved, representing he intended filling up the centre with the title of some oil. Notice was given by the engraver to the police. The question was reserved by *Coleridge, J.*, as to the sufficiency of this evidence.

*Buttleson* for the prosecution.

The Court affirmed the conviction.

*Regina v. Rundle.* April 28, 1855.

INDICTMENT AGAINST HUSBAND FOR ILL-TREATING WIFE.

Held, that a husband whose wife is a lunatic,

<sup>1</sup> Which enacts, that "If any person shall engrave or in anywise make upon any plate whatever or upon any wood, stone, or other material, any bill of exchange or promissory note for the payment of money, or any part of any bill of exchange or promissory note for the payment of money purporting to be the bill or note or part of the bill or note of any person or persons, body corporate or company carrying on the business of bankers (other than and except the Bank of England), without the authority of such person or persons, body corporate or company," &c., "every such offender shall be guilty of felony."

and living with him, cannot be indicted under the 16 & 17 Vict. c. 96, s. 9, for abusing and ill-treating her, as having the care and charge of her, but that it is an offence only at Common Law.

THE indictment in this case charged the prisoner that, having the care of his wife, who was a lunatic to his knowledge, he had abused and ill-treated her. On the trial before *Crowder, J.*, the question was reserved, whether the prisoner was within the meaning of the 16 & 17 Vict. c. 96, s. 9, as having the care and charge of his wife.

By this section it is enacted, that "If any superintendent, officer, nurse, attendant, servant, or other person employed in any registered hospital or licensed house, or any person having the care or charge of any single patient, or any attendant of any single patient, in any way abuse, or ill-treat, or wilfully neglect any patient in such hospital or house, or such single patient, or if any person detaining or taking or having the care or charge, or concerned or taking part in the custody, care, or treatment of any lunatic or person alleged to be a lunatic, in any way abuse, ill-treat, or wilfully neglect such lunatic or alleged lunatic, he shall be guilty of a misdemeanor, and shall be subject to indictment for every such offence," &c.

*Stock and Karslake* for the prosecution.

The Court said, that the Statute was not to interfere with the care and charge of a husband, which was purely of a domestic character, and that the offence could only be proceeded against under the Common Law.

## ANALYTICAL DIGEST OF CASES,

### SELECTED AND CLASSIFIED.

#### HOUSE OF LORDS' APPEALS.

##### AMENDMENT.

See *Pleadings*.

##### APPEAL.

*Objection in respect of parties*.—An objection in respect of parties to an appeal must be taken before the Appeal Committee. *Owen v. Homan*, 4 H. of L. Cas. 997.

##### COMPROMISE.

*Cause standing over indefinitely*.—The House will refuse to allow a cause to stand over indefinitely, though upon an understanding that the appeal is to be compromised, but will require it to be proceeded with in its regular turn, or to be withdrawn. *Mayor of London v. Combe*, 4 H. of L. Cas. 1,089.

##### COSTS.

See *Winding-up Act*, 2.

##### CREDITOR.

See *Partnership; Surety*.

##### DEED.

*Voluntary or for value*.—*J. S.*, under his

marriage settlement, was seised of certain estates in the county of Clare for life, remainder to his sons successively in tail, subject to a charge of 5,000*l.* as a provision for younger children. *B. S.* was the eldest son of this marriage, *W. S.* another son, and there was a daughter *Diana*. *J. S.* afterwards purchased other estates, one of which was called *K.*, which in 1806 he conveyed by way of mortgage security to the Bishop of Elphin. In February, 1807, he executed a deed, by which assuming to be the owner in fee of *K.*, he conveyed it and other lands to trustees for himself for life, then to his eldest son *B. S.* for life, remainder to the eldest and other sons of *B. S.* successively in tail. This deed contained a covenant on the part of *B. S.* to pay *J. S.*'s debts, and to discharge a sum of 2,000*l.* which *J. S.* had undertaken to pay to two children of *Diana*; and also an assignment by *J. S.* of his personal estate in favour of *B. S.*, who was thereby appointed the attorney of *J. S.*, with power to call in the debts due to him. The deed was registered (apparently

without the knowledge of *J. S.*, or of *W. S.*) upon the 1st June, 1807. On the 13th June, 1807, by a deed, to which *J. S.*, *B. S.*, two trustees, and *W. S.* were parties, *J. S.* granted and *B. S.* confirmed to the trustees the lands of *K.* to *J. S.* for life, then to *W. S.* for life, remainder to his first and other sons in tail, with a power to each succeeding tenant for life to charge the same with a jointure for his wife; and by the same deed *W. S.* gave up his share of any benefit from the provision for younger children under his father's marriage settlement or otherwise. This deed was registered a few days afterwards. *J. S.* died in November, 1808, and *W. S.* entered into possession of the lands of *K.* *W. S.* married in 1815, and *B. S.* was a party to his marriage settlement, in which the lands of *K.* were included, and by which, under a power contained in the deed of June, 1807, *W. S.* created a jointure for his wife. *B. S.* paid his father's debts, satisfied the mortgage on the lands of *K.*, obtained a re-conveyance of them to himself, and died in 1837, having allowed *W. S.* to remain in undisturbed possession up to that time. *W. S.* continued in possession, and died in 1843. The son of *B. S.* claiming under the deed of February, 1807, brought ejectment against the son of *W. S.*, who relied on the deed of June for his title. At a trial of this ejectment, the jury found that the deed of February, 1807, was a voluntary deed, and that that of June, 1807, was given for a valuable consideration. The Court of Queen's Bench in Ireland directed a new trial, which took place, but the defendant did not appear, and the plaintiff obtained judgment against him by default. A bill was filed by the plaintiff in the Court of Chancery in Ireland to have the trusts of the deed of February, 1807, carried into execution, and that Court decreed accordingly.

*Held*, that the decree was right; that after what had occurred at law, it must be assumed that the deed of February, 1807, was given for a valuable consideration, and that the deed of June, 1807, was a voluntary deed; and further, that the subsequent marriage of *W. S.*, and the circumstances attending it, did not constitute his children purchasers for value under the latter deed, which could not prevail against an earlier and a previously registered deed that had been executed for a valuable consideration. *Scott v. Scott*, 4 H. of L. Cas. 1065.

#### DILIGENCE.

*See Interference with Property.*

#### FRAUD.

*See Surety.*

#### INTERFERENCE WITH PROPERTY.

*Pending suit.*—*Married woman.*—*Separate estate.*—*Diligence.*—It is a matter of discretion for the Court of Chancery, whether it will or will not interfere by *interim* order respecting the property of a litigant. If the property is *in medio* (in the actual enjoyment of no one), the Court will interfere for the benefit of all concerned.

When a married woman, having a separate estate, is a party to a suit, the interference will be accorded or refused according to the circumstances of the case.

Where the Court summarily interferes against the legal possession, it has a right to expect a plaintiff to proceed with the most complete and honest diligence to obtain a decree. Delay in his proceedings constitutes an objection to the proposed interference. *Owen v. Homan*, 4 H. of L. Cas. 997.

#### MARRIAGE.

*Expectation of property.*—*Promise to make a settlement.*—On a treaty respecting the marriage of *H. M.*, who was believed to have considerable expectations from his uncle, *H. E.*, the guardians of the lady desired a settlement; and *H. M.* addressed a letter to *H. E.*, who answered,—"I have made my will, and left you my property in the county of *T.*, which is very considerable." The guardians still refused their consent, "until a suitable settlement shall be made by Mr. *H. E.* of real estate upon the marriage, in the usual course of settlement, and until the sum of 10,000*l.* shall be secured to the trustees of the estate" of the father of the lady, from whom *H. M.* had some time before borrowed that money, in order to become a partner in a bank. The resolution of the trustees was communicated to *H. E.*, who in September, 1815, wrote,—"My sentiments respecting you continue unalterable; however, I shall never settle part of my property out of my power while I exist; my will has been made for some time, and I am confident that I shall never alter it to your disadvantage. I have mentioned before, and I again repeat; that my county of Tipperary estate will come to you at my death, unless some unforeseen occurrence should take place. I have never settled anything on any of my nephews, and I should give cause for jealousy if I was to deviate in this instance from a resolution I have long made." This answer was, at the desire of *H. E.*, communicated to the guardians, who, in March, 1816, consented to the proposed marriage which accordingly took place in July of that year. A settlement was then drawn up, in which it was recited, that "*H. M.* has reason to expect that he will, upon the decease of *H. E.*, become entitled by virtue of the will of *H. E.* to a certain portion of his estate and property, pursuant to the declaration of *H. E.* contained in his letter to *H. M.* of September, 1815." *H. E.* was made one of the trustees of the settlement, and about 12 months afterwards he executed the deed; but there was no evidence that he knew anything of its contents beyond the fact that he was named as one of the trustees. *H. E.* afterwards devised his property to other persons.

*Held*, affirming the decision of the Court below, that *H. M.* could not maintain a suit to compel the trustees under the will of *H. E.* to convey the Tipperary estate to him, for that *H. E.*'s letters did not amount to a contract to



settle it on him. *Mauvssell v. Hedges*, 4 H. of L. Cas. 1,039.

Case cited in the judgment: *Hammeraley v. De Biel*, 12 C. & F. 45; 3 Beav. 478.

#### MARRIED WOMAN.

*See Interference with Property.*

#### MASTER, DISCRETION OF.

*See Winding-up Act*, 1.

#### PARTIES.

*See Appeal.*

#### PARTNERSHIP.

*Appointment of receiver.—Creditors.—Promissory note.—Dissolution.*—A creditor of a partnership, consisting of two persons, had received from one of them joint and several promissory notes, accepted by himself and a third party, a married woman, having separate estate. The partnership was afterwards dissolved by deeds, by virtue of which the second partner, on giving up certain title-deeds, was altogether exonerated from liability to the creditor, who, however, expressly reserved his rights on all notes and other securities which he held in his hands at the time of the execution of those deeds. These transactions were wholly unknown to the third party, who was the surety on the notes. There were various circumstances which might have awakened the suspicion of the creditor, and he had not taken any steps to inform the surety as the notes became due, that she had become or continued liable upon them. In a bill for an account and a receiver, filed by the creditor, the surety put in an answer detailing these circumstances, and alleging fraud.

*Held*, affirming the decree of the Lord Chancellor *Truro* (who had reversed the order of the Master of the Rolls), that this was not a case in which the Court would interfere by appointing a receiver. *Owen v. Homan*, 4 H. of L. Cas. 997.

#### PLEADINGS.

*Form of.—Amendment.*—On the hearing of a cause, in which the question intended to be brought up for decision depended on the form of the pleadings, and the House, after argument, was of opinion that the pleadings would not allow that question to be properly decided, time was given to allow an arrangement between the parties, by which the pleadings might be altered for that purpose. *Margnis of Bristol v. Robinson*, 4 H. of L. Cas. 1088.

#### PRACTICE.

*See Appeal; Compromise; Pleadings.*

#### PRINCIPAL AND SURETY.

*See Surety.*

#### RECEIVER.

*See Partnership.*

#### SETTLEMENT ON MARRIAGE.

*See Marriage.*

#### SOLICITOR.

*See Winding-up Act*, 2.

#### SURETY.

1. *Inquiry by creditor.—Fraud.*—Though a creditor may not, in every case, be bound to inquire into the circumstances under which a third person becomes surety to him, he is so when the dealing between the parties are such as to lead to a suspicion of fraud. *Owen v. Homan*, 4 H. of L. Cas. 997.

2. *Creditor giving time to debtor.*—It is a general rule that a creditor may give time to a principal debtor without prejudicing his right against the surety, provided he expressly reserves such right. Circumstances may, however, prevent that rule from having effect. *Owen v. Homan*, 4 H. of L. Cas. 997.

#### VOLUNTARY DEED.

*See Deed.*

#### WINDING-UP ACT.

1. *Construction of.—Equitable and legal debts.—Discretion of Master.*—The intention of the 11 & 12 Vict. c. 45 (the Winding-up Act of 1848), was to provide for debts recoverable only in equity as well as for those recoverable at law; and the Master has an uncontrolled discretion (subject to appeal) to allow or disallow, or to allow as a claim only, according to the proofs adduced before him, any demand against a company. *Terrell v. Hutton*, 4 H. of L. Cas. 1,091.

2. *Expenses of formation of company.—Claim of solicitor for services.—Costs.*—Certain persons proposed to form a company; they employed A. as their solicitor; he was so named, on provisional registration, under the Joint-Stock Company's Act; the directors were not to be personally liable to the officers of the company; the solicitor was continuously employed, until after the company had been completely formed and registered, and until it was wound up. The 44th article of the deed of settlement declared, that "a sufficient part of the funds of the company should, upon complete registration, be appropriated in payment of the expenses of and incidental to the formation of the company, including those of, or having reference to, the preparation and execution of that deed." When the company was taken before the Master on the Winding-up Act, the solicitor presented a demand for services from the earliest period up to that time. The Master allowed the demand as a claim only, and not as a debt, leaving the solicitor to proceed at law.

*Held*, reversing an order of Vice-Chancellor *Kindersley*, which had permitted the order of the Master to stand, that the Master ought to have allowed this demand as a debt, but subject to proof that the items came under the description contained in the 44th article, and subject also to taxation.

As the solicitor had omitted to bring the 44th article to the notice of the Vice-Chancellor, his order, although reversed, was reversed without costs. *Terrell v. Hutton*, 4 H. of L. Cas. 1091.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, MAY 12, 1855.

### COUNTY COURTS.

#### THE COMMISSIONERS' FIRST REPORT.

WE proceed to submit to our readers the substance of the recommendations contained in the first report of the Commissioners appointed to inquire into the state of the County Courts and the course of practice therein, and particularly with respect to the fees levied in those Courts. The report, dated the 31st March, is signed by the Master of the Rolls; Mr. Justice Erle; Mr. Justice Crompton; Mr. Henry Fitzroy; Mr. Keating, Q.C.; Mr. Koe, Q.C.; Mr. Serjeant Dowling; Mr. J. Pitt Taylor; and Mr. Mullings.

The report treats of the following matters:—1. The establishment of the Courts. 2. The Jurisdiction. 3. The Judges, Officers, and Advocates. 4. The Procedure. 5. The Fees. 6. The Costs. 7. The Accounts. 8. The Revenue of the Courts. 9. Application of the Revenue.

The Commissioners commence their recommendations with respect to the jurisdiction of the County Courts on legal claims, and observe, that in examining this subject they have been necessarily led to compare the procedure in the Superior Courts with that established in the County Courts. They observe that, in the former, the means adopted for separating questions of law from those of fact, the exertions of skilled advocates accustomed to practise in the central tribunals of the country, the attendance of a learned and enlightened Bar, in whose presence each Judge is required to fulfil the functions of his office, the facility for reviewing his opinion and

direction, and for appealing from the decision of the full Court, are calculated to insure the satisfactory administration of justice. On the other hand, considerable delay and expense necessarily result from bringing the machinery of those Courts into full activity.

In the County Courts the absence of any pre-appointed means of separating questions of law from those of fact, the non-employment generally of legal advocates, the non-attendance of a Bar, the rapidity of the proceedings, and the power of the Judge finally to decide on all questions of law and fact, except where the claim exceeds 20*l.* in amount, render the judgment of the Court less secure against miscarriage. On the other hand, the County Court is near to the residence of the suitors, and the proceedings are simple, cheap, speedy, and final.

The Commissioners are of opinion, that in claims of considerable amount the inconveniences incident to the administration of justice in the Superior Courts are counterbalanced by the greater certainty in the application of the rules of law than can be expected in a tribunal so constituted as the County Court. On the other hand, in claims of small amount they think that the evils caused by an occasional miscarriage are more than counterbalanced by the advantages presented by a local tribunal, the proceedings of which are simple, cheap, speedy, and final.

They observe that it may, perhaps, be difficult satisfactorily to define the word “small,” as it is a word of relation, but they think it may be conveniently treated for the purposes of jurisdiction, as embracing claims not exceeding 20*l.* With regard to claims exceeding 20*l.*, but not exceeding

<sup>1</sup> Mr. Pitt Taylor signs subject to some observations appended to the report.

50*l.* in amount, they think the jurisdiction should remain *concurrent* as at present, but that such claims should be subject to removal by the defendant on certain conditions, and that claims of a greater amount, or such as involve questions otherwise excluded from the jurisdiction should be decided by the County Courts only where *consent* has been given for that purpose by both parties, or a superior tribunal has directed the matter to be disposed of in the County Court.

The Commissioners then proceed to divide their recommendations on the subject of jurisdiction into two parts;—1st, with reference to increasing the present jurisdiction of the Courts; 2ndly, with reference to the introduction of additional securities for the due exercise of that jurisdiction.

First. As to the *exclusive* jurisdiction of the Courts in consequence of the penalty by deprivation of costs in the Superior Court, should the plaintiff not recover a sum to the amount of 20*l.* or 5*l.*, according to the nature of the claim. The Commissioners state that the object which the Legislature had in view was, to secure to the public the benefit of a local tribunal in which claims of a moderate amount, and not complicated in their nature, might be enforced with cheapness and rapidity; and the report states, that during the seven years which have elapsed since the establishment of the Courts, the experiment has been eminently successful; but, after all the consideration which the Commissioners have bestowed upon the subject, they are not induced to recommend any considerable extension of the jurisdiction of the Court. They think, however, that as actions for false imprisonment are now within the jurisdiction, actions for malicious prosecution might also be properly brought within it.

They recommend, however, that the proviso contained in section 58 of the 9 & 10 Vict. c. 95, by which certain questions of title are excluded from the jurisdiction of the Court, should continue in force, unless *both parties* should at the trial *consent* to the Judge deciding the question in dispute; and they think that such a jurisdiction might be beneficially conferred by the consent of both parties where the question arises incidentally to the claim which it is the immediate object of the action to enforce.

Thus an action may be brought for the value of a tree which, it is alleged, that the defendant has wrongfully cut down. The de-

fence may be, that the tree was growing on the defendant's own land. The question of title to the freehold then becomes a question incidentally arising in the cause, but which must be decided in order to dispose of the claim. Again, in an action for rent, if the tenancy under the plaintiff be denied, a question of title to the tenancy may arise. Both parties may be quite willing that the Judge of the County Court should decide between them, but as the law now stands, the Judge has no power to do so, and consent would not confer jurisdiction for this purpose.

They recommend, therefore, that if both parties are willing to have the case decided by the County Court Judge, an entry to that effect should be made on the minutes of the Court, and then that the judgment should be binding on the parties so far as the immediate question in dispute is concerned, but should not be evidence of title between the parties or persons claiming by, through, or under them in any other proceeding.

The Commissioners do not recommend that jurisdiction should be conferred in such cases, where the immediate object of the action is to recover something which the proviso enacts shall not be within the jurisdiction of the Court; as, for instance, an action for tolls or an action for the recovery of a tenement not within the meaning of section 122.

The present law as to *costs* in the Superior Court, so far as it affects jurisdiction, the Commissioners think should remain unaltered with the exception, that where an action is brought in the Superior Court on a contract, to recover a less sum than 20*l.*, and the defendant suffers judgment by default, the plaintiff should recover no costs, unless upon application a Judge of a Superior Court should otherwise direct. This deprivation of costs, however, should be subject to the exceptions contained in section 128 of the 9 & 10 Vict. c. 95, where the parties reside more than 20 miles apart, or the other circumstances contemplated by the section, exist.

2nd. As to *concurrent* jurisdiction, where the amount of the claim exceeds 5*l.* in tort and 20*l.* in contract, but does not exceed 50*l.*—In those cases the choice of tribunal between the Superior Court and the County Court, is vested in the plaintiff. This jurisdiction as to claims above 20*l.*, was first conferred on the County Court in the month of August, 1850, and has been exercised to a very considerable extent, as no less than 39,580 plaintiffs, both in tort and contract, ranging in amount between 20*l.* and 50*l.*

inclusive, have been entered in the County Courts between the time of passing the Act and the 31st December, 1853, and of these 22,968 have been tried.<sup>1</sup>

The Commissioners are of opinion, that in such cases the *defendant* should have an opportunity of expressing his *dissent* from the plaintiff's choice of tribunal, the plaintiff being permitted, as at present, to exercise his option in the first instance; but the defendant, if not disposed to try the cause before the County Court, ought to be permitted to try in the Superior Court without assigning any reason, on giving satisfactory proof that his objection is not for the purpose of delay. And they add, that for this purpose he should be required to give in the County Court *security for the amount claimed and costs* in the Superior Court, or to make a deposit to the like amount, not exceeding in the whole 150*l.*, the costs in the Court below being treated as costs in the cause. The plaintiff might then, it is suggested, be transmitted to such one of the Superior Courts as the plaintiff should direct. If, however, the defendant do not declare his dissent and comply with the condition within such time as shall be fixed by the practice of the Court, he must be taken to assent to the cause being tried by the County Court, and that tribunal may then dispose of the cause in the usual way.

This right of removal is intended to be in addition to the power to remove already existing by law in such cases.

It is also recommended, that if the sum claimed be a balance alleged to be due, not exceeding 50*l.*, after making an allowance for a *set-off*, if the claim and counter-claim do not respectively exceed 200*l.*, the case should be within the concurrent jurisdiction.

The Commissioners also think that the concurrent jurisdiction may be rendered beneficially available by extending it to actions of *malicious prosecution*. They also recommend that in an action brought in the Superior Court, where it appears that a sum not exceeding 50*l.* is claimed in an action of contract, or that the claim is reduced by set-off, payment, or otherwise, to a sum not exceeding 50*l.*, the Judge be authorised to direct, on the application of either party and on such terms as he shall think fit, that the cause be heard in a County Court.

Third. Jurisdiction by *consent*.—This

power was conferred on the Court by the 17th section of the 13 & 14 Vict. c. 61. The principle of the section is to permit parties, if so inclined, to refer matters in dispute to the County Court Judge as to an arbitrator, and the Commissioners are of opinion that the principle should be applicable to all questions, whether of law or fact, in which the Courts of Common Law have jurisdiction, except in crim. con. actions.

On proceedings in *ejectment*, with reference to the power with which the County Court is invested in certain cases to restore possession of tenements where the annual rent or value does not exceed 50*l.* and no fine has been paid, the Commissioners think that the County Court ought to have jurisdiction only in those cases where the amount of the annual rent and annual value do not exceed 50*l.* They observe that, unless such an alteration in the law be made, the jurisdiction would continue to embrace a class of cases which the Legislature could not have intended to be decided in the County Court. Thus, in the case of land let on a building lease, the reserved rent might not exceed 50*l.*, but the value of the houses erected upon it being of many thousand pounds' value, the annual value might far exceed 50*l.* They, therefore, recommend that where the annual *value* of the premises sought to be recovered exceeds the amount of 50*l.*, although the rent reserved does not exceed that amount, the case should not be within the jurisdiction of the County Court. With this alteration of the law, the Commissioners recommend that this jurisdiction be extended to cases where one-half years' rent is in arrear, and the landlord or lessor has a right by law to re-enter for nonpayment, but no sufficient distress has been left on the premises to countervail such rent; and also to the case of mortgages where the money lent does not exceed 100*l.* and the mortgagee is entitled to obtain possession. In the latter case they think that the Judge should have power to postpone granting a warrant of possession for such period as he may think fit, and be invested with the same powers as might be exercised by the Court in pursuance of the first Common Law Procedure Act, s. 219, in actions of *ejectment* between mortgagee and mortgagor. They also deem it desirable that where a sub-tenant is served with a summons at the instance of the superior landlord he should be bound to give notice to his immediate landlord, who should be entitled to come in and defend. The Commissioners also re-

<sup>1</sup> It does not appear whether all these cases have been actually litigated before the Court or jury.

commend that a claim for meane profits not exceeding 50*l.* in amount, should be allowed to be included in a plaint for the recovery of possession of the demised premises. They are, however, of opinion that the finality of the Judge's decision in cases of this description should be modified, and that an appeal ought to be allowed where the annual rent and value of the premises or the mortgage debt exceeds 20*l.*; and that this mode of appeal should be allowed in addition to that provided by sections 126 and 127 of the 9 & 10 Vict. c. 95.

In *replevin*, the Commissioners recommend the following alterations to remedy the inconvenience now existing:—

At present, when the chattel has been seized, if the owner be desirous of contesting the lawfulness of the seizure, he must give the replevin bond to the sheriff or his replevin clerk. By law, the sheriff is only bound to appoint four replevin clerks in each county, and the persons whose chattels are most likely to be distrained are not generally aware of the name or residence of those clerks. Consequently, in the majority of instances the alleged aggrieved party submits to the distress or travels with his sureties to the county town in order to give the usual bond. In the former case, the chattels may be sold at a considerable loss, or an oppressive arrangement be made for the surrender of them; in the latter, the replevisor may be compelled to take a long and expensive journey with his sureties. Again, although the replevisor be desirous of trying his cause in the Supreme Court, he is obliged to give the bond to prosecute his suit in the County Court, and afterwards to remove it by *certiorari* from the latter Court after complying with the conditions imposed by the Statute. Again, if the replevisor be desirous of obtaining possession of his chattel, and prefer depositing money to giving security, he is not permitted so to do. The same observation as to not being allowed to deposit money, applies to cases of removal in conformity with the provisions of the Statute. Again, the decision of the County Court Judge on questions of law in those cases where neither party removes, although the rent or damage exceeds the sum of 20*l.*, is not subject to appeal.

To remove these objections, the Commissioners recommend, first, that the clerk of the County Court should be the sole replevin clerk in each district and perform all the duties of that officer. Secondly, that the replevisor should be permitted instead of giving security to pay into the hands of the clerk, a sum proportionate to the amount of the rent claimed or the damage alleged to have been done, such sum in case of dispute to be settled by the clerk, together with a certain sum for costs.

Thirdly, that a similar substitution of payment of money instead of giving security under the Statute, should be permitted, when the plaint is removed. Fourthly, that the replevisor, if desirous of trying the cause in the Superior Court should, on making a declaration similar to the statutory one, be permitted to give security or pay money into the hands of the clerk, and that on such security being given or payment made, the chattel should be delivered to the replevisor and the action of replevin be at once commenced in the Superior Court. Fifthly, that if the replevisor be desirous of proceeding in the County Court, the practice as to removal now prevailing under the Statute should continue, but modified by the right to deposit money instead of giving security. Sixthly, that where the cause is not removed by either party, the decision of the Judge on questions of law should be subject to appeal in the same manner as on ordinary claims in cases where the rent or damages exceed 20*l.*

In *interpleader* cases, the County Court has at present jurisdiction in cases arising out of claims made on chattels taken in execution, but has no jurisdiction in other cases where interpleader is allowed in the Superior Courts. The Commissioners are of opinion that such a jurisdiction should be conferred on the County Court, and that wherever interpleader would be permitted in the Superior Courts of Law the suitors of the County Court should be allowed a similar privilege; but that in the cases where claims are made on goods taken in execution, the decision of the County Court Judge should be subject to appeal in the same manner and on the same grounds as in ordinary claims exceeding 20*l.* It is also recommended that where in cases of interpleader the second action is brought or threatened in the superior tribunal, the right to interplead ought still to be reserved to the defendant in the County Court. In the event of an issue being directed by the Judge of the County Court, he might select that tribunal to dispose of it which appeared to him most convenient for the purpose. Should a proper case be shown for altering the tribunal before which the case was so directed to be tried, a Judge of the Superior Court might be enabled to interfere.

The Commissioners next proceed to consider the additional securities suggested for the due exercise of the jurisdiction.

First, as to the writ of *certiorari*. By the provisions of section 90 of the 9 & 10

Vict. c. 95, no case can be removed from the County Court where the claim does not exceed 5*l.*, and then only by leave of a Judge of the Superior Court on such terms as he thinks fit. The Commissioners observe that—

As a general rule, the amount of the claim is a convenient test of the importance of the question to be determined, and therefore it is generally desirable that where a claim does not exceed 5*l.* the cause should be irremovable. But it occasionally happens that questions of great difficulty, both of law and fact, arise in cases where the amount in dispute does not exceed 5*l.* Thus, questions of fact occur where the claims belong to a class, each of which, individually, is of less amount than 5*l.*, but which, being questions of fact cannot, as the law now stands, be raised before a superior tribunal. Thus, in actions by several workmen against a contractor, or by several passengers on a railway, or by several customers of a common carrier, where in each case the demand does not exceed 5*l.*, although the question is of considerable importance, and in effect brings into litigation an aggregate amount far beyond 5*l.*, no means exist at present of removing such actions into the Superior Court. Again, different questions of law other than those which are excluded from the jurisdiction of the Court may arise, or such questions may be so mixed with questions of fact as not to be conveniently separated, and yet the amount in dispute may not exceed 5*l.*

They therefore recommend, that where a claim, whether in tort or contract, does not exceed 5*l.*, it shall be competent for the defendant to remove the plaintiff into one of the Superior Courts by leave of the Judge of those Courts; but only on giving security for the claim and costs in the Superior Court, not exceeding 100*l.*, or on depositing that amount, and on such other terms as the Judge may think proper to impose.

It is competent for a defendant to remove a plaintiff for a sum exceeding 5*l.* and not exceeding 50*l.* from the County Court by permission of a Judge of the Superior Court, on such terms as he shall think fit; and the Commissioners are of opinion, that in such cases the law should remain unaltered, except that the Judge should further be empowered to make the costs of the proceedings in the County Court, which, under the present law, are lost to the party, costs in the cause.

They recommend, also, that where an application is made for a writ of certiorari to one Court or to one Judge for the purpose of removing a plaintiff from the County Court, and the application is contested, the refusal

by that Court or Judge, subject in the latter case to the usual appeal to the Court, should be binding in the matter, and that no further application should be permitted to any other of the Superior Courts on the same grounds.

They further recommend that in all cases where a certiorari has been obtained *ex parte* for the removal of a plaintiff from the County Court, and the party obtaining it has not lodged the writ with the clerk of the County Court two clear days at least before the day fixed for hearing the plaintiff, and if he has not given notice to the plaintiff of such certiorari having been obtained one clear day at least before the day fixed for hearing the plaintiff, the Judge of the County Court ought to be empowered, at his discretion, to order the party obtaining the certiorari to pay all the costs of the day, or so much thereof as he shall think fit, if the Court or Judge granting the certiorari has made no order respecting such costs.

It is also recommended that a Court or Judge to whom an application is made for a certiorari to remove a plaintiff from a County Court, ought to be empowered to grant a rule or summons to show cause why a certiorari should not issue, and that such rule or summons, if so directed, should be a stay of proceedings until the determination of such rule or summons.

Secondly, with respect to the writ of *prohibition*.—The Commissioners recommend that restrictions similar to those in the case of writs of *certiorari*, except as to deposit of, or security for costs should, so far as they are applicable, be imposed on writs of prohibition. They further recommend, that where the writ of prohibition is directed to the Judge of the County Court, the decision of the Superior Court should be final, and that no declaration or further proceedings in prohibition be allowed.

Thirdly, as to *Appeals*.

First, as to questions of *law*. In causes peculiarly within the jurisdiction of the County Courts one important object sought to be attained is finality with which a right to appeal would injuriously interfere. The Commissioners think, therefore, that it would be contrary to sound principle to allow an appeal either on questions of law or fact, when the matter in dispute does not exceed 20*l.* in amount. If any difficult question of law be likely to arise in a cause of that amount, the facilities for removal already existing, or which have now been recommended, would prevent a failure of justice, and with respect to unexpected

difficulties arising at the trial they must be exceptional, and should not interfere with the general principle of the jurisdiction.

With respect to claims which exceed the amount of 20*l.*, but do not exceed 50*l.*, and cases within the consent clause of the extending Act, a right of appeal exists, and the Commissioners are of opinion that no change should be made in the law in that respect. They also think that the power of appeal should exist in all claims exceeding 20*l.* within the legal jurisdiction of the Court, including that branch which has lately been conferred in matters of revenue.

Secondly, as to appeals on questions of fact. With respect to those questions, the Commissioners are of opinion, that whether under the exclusive, concurrent, or consent jurisdiction, they ought not to be allowed. In cases within the exclusive jurisdiction they would be extremely mischievous, as tending to promote litigation and increase expense. In cases within the two other branches of the jurisdiction, as the Judge only acquires power to decide the case by the consent of the parties, his determination is similar to the award of an arbitrator, and on questions of fact ought to be equally final.

The recommendations of the Commissioners as to Fees and Costs will next be noticed.

## NEW COURTS OF LAW.

### FUND FOR PURCHASING A SITE AND ERECTING THE PROPOSED BUILDING.

THE return relating to the funds standing in the name of the Accountant-General of the Court of Chancery, obtained on the motion of Mr. Mullings, and which will be found in a preceding Number for March 3rd, affords some important accurate information with reference to that portion thereof known as the Suitors' Fund.

The amount of the suitors' cash lying unemployed in the Bank on October 1st, 1853, was 3,239,226*l.* 18*s.* 5*d.*, whereof 2,252,464*l.* 0*s.* 7*d.* has been laid out in the purchase of 2,590,928*l.* 18*s.* 6*d.* stock, and the surplus interest which has arisen therefrom, amounting to 1,032,053*l.* 7*s.* 4*d.*, has been laid out in the purchase of 1,291,629*l.* 5*s.* 6*d.* stock. In case of the whole of the above amount of suitors' cash being reclaimed, and the stock should prove insufficient to realise the cash wherewith it was purchased, this latter amount of stock is liable to make good the deficiency, an event never likely to happen, as this stock

has been purchased at an average price of 87*l.*, and it is also understood the cash on accounts, which have not been dealt with for 15 years amounts to at least 500,000*l.*

The interest of both the above amounts of stock is applicable to the payment of the salaries and compensations of the officers of the Court of Chancery. An analysis of the last annual return of the Accountant-General of the Court of Chancery to 1st November, 1854, shows that the compensations payable to the officers of the Court, and the salaries of the Masters and their clerks, which, under the Masters' Abolition Act, will cease on their deaths, amount to 80,000*l.* per annum, and as these are now diminishing to the extent of at least 2,000*l.* per annum, it follows that at the expiration of 20 years 40,000*l.* per annum thereof will cease to be payable. Assuming that 40,000*l.* is, in round numbers, the interest of the above 1,291,629*l.* 5*s.* 6*d.* stock, we find, on reference to the schedule to the Succession Duty Act, that an annuity of 40,000*l.* per annum, diminishing annually 2,000*l.*, is of the value of 320,669*l.* cash, or 352,735*l.* consols at 90*l.* If, therefore, 352,735*l.* of the above 1,291,629*l.* 5*s.* 6*d.* stock were authorised to be laid out in the purchase of an annuity of 40,000*l.* per annum, diminishing 2,000*l.* per annum, and terminating in 20 years, and a guarantee given by Parliament to supply any portion of this 1,291,629*l.* 5*s.* 6*d.* stock that might be required to make good any demand of the suitors, it would leave 938,894*l.* 5*s.* 6*d.* stock, which might, without injury to the suitors, be applied in the purchase of the site and the erection of the new Courts of Justice, and it would be amply sufficient for that purpose, as will be seen on reference to the estimated expense thereof detailed in our Number for the 15th of May, 1852. As an equivalent to the suitors for such an application of a portion of their funds, the Government should assume the payment of the rest of the compensations, and the salaries of the Masters and their clerks, whereby the suitors would be relieved for the next 20 years to the extent of 40,000*l.* per annum, and for the following 20 years to the extent of 40,000*l.* at the commencement, but subsequently diminishing annually 2,000*l.*, so that the fees now levied on the suitors might, on the Government assuming that payment, be diminished to the extent of 40,000*l.* per annum, or four-ninths of the present fees imposed on the suitors of the Court of Chancery.

## REMUNERATION OF SOLICITORS.

## PETITIONS FROM THE LIVERPOOL AND LEEDS LAW SOCIETIES.

*To the Right Honourable the Lord High Chancellor of Great Britain.*

The Memorial of the Liverpool Law Society of practising Attorneys and Solicitors.

SHWETH,

That your Memorialists are largely engaged in suits in the High Court of Chancery, the necessities of commerce occasioning frequent resort to that Court.

That the inadequate remuneration of the country solicitor was the subject of complaint in the time of your lordship's great predecessor, the Earl of Eldon, and has so continued to the present time, with a great aggravation within the last three years by the changes introduced in the practice of the High Court of Chancery.

That your Memorialists greatly deplore that their emoluments should be made dependent upon the length and bulk of paper consumed in the proceedings in suits, and would hail as a great boon any plan which could be devised to make their compensation run *pari passu* with the interests of their clients, and submit with very great deference, that having reference to some standard scale of remuneration, large discretionary powers might be safely given to taxing officers to award remuneration according to the intricacy of a suit, and the time and attention and skill apparently bestowed upon it.

That your Memorialists would fain hope that your lordship's known liberality and consideration for all members of our common Profession, would induce you to illustrate your tenure of the Great Seal, by removing all just grounds of complaint in reference to the remuneration of solicitors, by the appointment of a Committee to investigate the whole subject, and by carrying the result of its labours into effect.

And your Memorialists will ever pray.

*To the Right Honourable Robert Monsey Baron Cranworth, Lord High Chancellor of Great Britain.*

The memorial of the practising Attorneys and Solicitors, residing at Leeds, constituting the Leeds Law Society.

SHWETH,

That in common with the general body of our Profession, we hailed the prospect of substituting a scale of equity costs which would proportion the solicitors' remuneration to the capital, skill, and labour actually employed for one which made it chiefly dependent on the length of the documents prepared.

That the old scale, by allowing unnecessary charges for formal or easy services, but excluding other services of great difficulty and importance from all remuneration, was unjust to the Profession, except to the few whose

equity practice was extensive enough to make the allowances for formal or easy business balance the want of any allowance for difficult and important services, and was unjust to clients by making one pay in a high scale of allowance on formal documents for difficult but unremunerated services to another, as well as injurious to their interests, by making it the interest of solicitors to increase the number or length of the documents they had to prepare.

That the scale of equity costs, issued in October, 1852, does not, however, by any means answer the requirements of the case, and must, as your memorialists conceive, have been framed under great misconceptions of the nature, extent, and difficulty of the services required from the solicitor under the new system; its general effect being to abolish, or greatly reduce, the length of documents upon which, under the former system, the solicitor's remuneration chiefly depended, without any, or with a very inadequate allowance, for those services which were performed gratuitously under the old system, and which, under the new one, are much more important, and require a much larger share of the solicitor's personal attention.

That the new scale will be ultimately as injurious to clients as it now is to solicitors, because its inadequacy to the capital, skill, and labour required must inevitably lead men of respectability who are possessed of the necessary capital, skill, and aptitude for labour to devote their attention to other modes of employment, and leave the business of solicitors in equity in the hands of less responsible and less trustworthy persons.

That the present scale, besides its inadequacy as a whole, is to a considerable extent subject to the same defect which formed the chief objection to the former one, that of benefiting the practitioner who attends to his own interests in preference to his clients, and prejudicing one who attends to his clients' interests in preference to his own; first, because the amount of the allowances are not correctly proportioned to the comparative capital, skill, and labour employed on each different head or class of business; and, secondly, because no adequate remuneration is allowed for the labour requisite to perfect the solicitor's work at the commencement, and as the consequence the work requires correction or completion in subsequent stages for which it is found necessary to make allowances.

That your memorialists would by no means complain of their anomalous situation in being excluded from the common right of having the value of their services assessed by a jury, if the rules of taxation were properly adapted to the requirements of the case; they are, on the contrary, sensible that taxation by an officer of the Court, if conducted on sound principles, and with proper discretion, is a better security to both solicitor and client, as well as more consistent with the due administration of justice than an appeal to a jury on a *quantum meruit*;



but they respectfully submit to your lordship that a thorough revision of the system of taxation generally, and of the scale of the Act of 1852 in particular, is absolutely necessary in justice to both clients and solicitors; and, though it is desirable in framing a permanent system, that as little should be left to discretionary power as the nature of the case permits, your memorialists conceive that in the outset, and as an experimental measure, it would be advisable to give the taxing officers wide discretionary powers to consider the special circumstances attending the conduct of every business which comes under their notice, and to tax the costs with reference to such special circumstances, without being too strictly fettered by inflexible rules.

We, therefore, pray that your lordship will be pleased to make such inquiries into the subject of taxation of costs in equity generally (and especially into the operation and tendency of the scale of October, 1852), as your lordship may think expedient, and to cause such alterations to be made in the rules of taxation and the scale of allowance as will secure to solicitors practising in Courts of Equity a fair and just remuneration for their capital and skill, and the services required of them.

EDWIN EDDISON, *Secretary.*

*Leeds, 27th April, 1855.*

## PERSONAL ESTATES OF INTESTATES.

THE following Bill has just been introduced into the House of Commons by the Honourable P. J. Locke King, for the settling of Personal Estates of Intestates. It is proposed that—

1. All ordinaries, as well the Judges of the Prerogative Courts of Canterbury and York for the time being as all other ordinaries and Ecclesiastical Judges, and every of them, having power to commit administration of the goods of persons dying intestate, shall and may, upon their respective granting and committing of administrations of the goods of persons dying intestate after the passing of this Act, of the respective person or persons to whom any administration is to be committed take sufficient bonds, with two or more able sureties, respect being had to the value of the estate, in the name of the ordinary, with the condition in form and manner following *mutatis mutandis*; viz.

“The condition of this obligation is such, that if the within-bounden *A. B.*, administrator of all and singular the goods, chattels, and credits of *C. D.* deceased, do make or cause to be made a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased which have or shall come to the hands, possession, or knowledge of him the said *A. B.*, or into the hands and possession of any other person or persons for him,

and the same so made do exhibit or cause to be exhibited into the registry of Court at or before the day of

next ensuing, and the same goods, chattels, and credits, and all other the goods, chattels, and credits of the said deceased at the time of his death which at any time after shall come to the hands or possession of the said *A. B.*, or into the hands and possession of any other person or persons for him, do well and truly administer according to law, and further do make or cause to be made a true and just account of his administration at or before the day of

and all the rest and residue of the said goods, chattels, and credits which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the Judge or Judges for the time being of the said Court, shall deliver and pay unto such person or persons respectively as the said Judge or Judges by his or their decree or sentence, pursuant to the true intent and meaning of this Act, shall limit and appoint; and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said Court, making request to have it allowed and approved accordingly, if the said *A. B.* within bounden, being thereunto required, do render and deliver the said letters of administration (approbation of such treatment being first had and made) in the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue:”

Which bonds are hereby declared and enacted to be good to all intents and purposes, and pleadable in any Court of justice.

2. The said ordinaries and Judges respectively shall and may and are enabled to proceed and call such administrators to account for and touching the goods of any person dying intestate, and upon hearing and due consideration thereof to order and make just and equal distribution of what remaineth clear (after all debts, funerals, and just expenses of every sort first allowed and deducted), amongst the wife and children, or children's children, if any such be, or otherwise to the next of kindred to the dead person in equal degree, or legally representing their stocks *pro suo cuiusque jure*, according to the laws in such cases, and the rules and limitation hereafter set down, and the same distributions to decree and settle, and to compel such administrators to observe and pay the same by the due course of her Majesty's Ecclesiastical laws; saving to every one supposing him or themselves aggrieved their right of appeal as was always in such cases used.

3. All ordinaries, and every other person who by this Act is enabled to make distribution of the surplusage of the estate of any person dying intestate, shall distribute the whole surplusage of such estate or estates in manner and form following; that is to say, one-third part of the said surplusage to the

wife of the intestate, and all the residue by equal portions to and amongst the children of such persons dying intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children who shall have any estate by descent from the intestate father or mother or by the settlement of such intestate, or shall be advanced by such intestate in his lifetime by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made; and in case any child shall have any estate by descent or by settlement from the said intestate, or shall be advanced by the said intestate in his lifetime by portion not equal to the share which will be due to the other children by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate to be distributed to such child or children as shall have any land by descent or settlement from the intestate, or where advanced in the lifetime of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated.

4. In case there be no children, nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, the residue of the said estate to be distributed equally to every of the next of kindred of the intestate who are in equal degree, and those who legally represent them.

5. That there be no representations admitted among collaterals after brothers and sisters children.

6. In case there be no wife, then all the said estate to be distributed equally to and amongst the children; and in case there be no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever.

7. In case any married woman dies intestate, her husband may demand and have administration of his rights, credits, and other personal estates, and recover and enjoy the same, as he might have done before the passing of this Act.

8. After the death of the father, if any of his children die intestate, without wife or children, in the lifetime of the mother, every brother and sister, and the representatives of them, shall have an equal share with him.

9. To the end that a due regard be had to creditors, no such distribution of the goods of any person dying intestate shall be made till after one year be fully expired after the intestate's death; and such, and every one to whom any distribution and share shall be allotted, shall give bond, with sufficient sureties, in the said Courts, that if any debt or debts truly owing by the intestate shall be afterwards sued for and recovered, or otherwise duly made to appear, that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of that debt or debts, and of the costs of suit,

and charges of the administrator by reason of such debt, out of the part and share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as aforesaid.

10. Provided always, that in all cases where the ordinary hath used heretofore to grant administration *cum testamento annexo* he shall continue so to do, and the will of the deceased in such testament expressed shall be performed and observed in such manner as it should have been if this Act had never been made.

11. The following Acts and parts of Acts are hereby repealed as to estates to be administered and distributed under this Act; that is to say—

The 22 & 23 of Car. 2, c. 10; the 25th sect. of the 29th Car. 2, c. 3; the 5th sect. of 1st Jac. 2, c. 17, so far as it makes the provisions hereby repealed perpetual; and the 6th, 7th, and 8th sects. of the said Act of the 1st of Jac. 2, c. 17.

12. This Act shall not extend to Scotland.

## TESTAMENTARY JURISDICTION BILL.

[Concluded from p. 496, ante.]

### Rules and Regulations.

It shall be lawful for the Lord Chancellor, at any time after the passing of this Act, and from time to time, to make such rules, orders, and regulations respecting the form and mode of proceeding in the Court, and the practice thereof, and the conduct and duties of the officers and practitioners therein, and, if he shall so think fit, for altering the course of proceeding herein prescribed or referred to in reference to any of the matters to which this Act relates, and also for regulating the fees and allowances to solicitors of the Court in relation to such matters, as to him shall seem fit, and from time to time to repeal or alter such rules, orders, and regulations; and all such rules, orders and regulations shall have the same force and effect as if the same had been enacted by Parliament: Provided always, that a copy of such rules, orders, and regulations shall immediately after the issuing of the same, be laid before both Houses of Parliament, if Parliament be then assembled, and if Parliament be not then assembled, then within five days after the meeting thereof: Provided also, that if either House of Parliament shall, by any resolution to be passed within 36 days after the same shall have been laid before such House, resolve or declare that such rules, orders, or regulations, or any of them, ought not to remain in force, then and in such case the same rules, orders, and regulations, or such of them as shall be so objected to, shall from and after such resolution be abrogated and cease to be binding; s. 83.

The acting Judge and registrar of every Court, or person, or body politic or corporate,

now having or exercising jurisdiction to grant probate or administration, or other person or persons having the custody of the documents and papers of or belonging to such Court, or person, or body politic or corporate, shall upon receiving a requisition for that purpose from the principal registrar, and at the times and in the manner mentioned in such requisition, transmit all wills, administration bonds, notes of administration, Court books, calendars, papers, and documents appertaining exclusively to such jurisdiction, to the record keepers of the Court, to be deposited in the Testamentary Office of the Court, and to be there arranged so as to be easy of reference; s. 84.

Any Judge, registrar, or other person who shall wilfully refuse or neglect so to transmit such wills, administration bonds, notes of administration, Court books, calendars, papers, and documents, or any of them, shall be liable to a penalty of 100*l.*, to be sued for and recovered, together with full costs of suit, in any of her Majesty's Superior Courts of Law at Westminster; s. 85.

It shall be lawful for the Lord Chancellor to cause such arrangements to be made as he shall think fit with any person, body politic or corporate, for or with respect to the temporary custody of the wills, administration bonds, notes of administration, Court books, calendars, papers, and other documents appertaining to the jurisdiction of any Court, or person, or body politic or corporate, now having or exercising jurisdiction to grant probate or administration, or for or with respect to the temporary custody of any part or portion of such documents until the same shall be required to be deposited in the Testamentary Office; s. 86.

If any person shall forge the signature of the principal registrar or any of the registrars, or shall forge or counterfeit any seal of the Court, or knowingly concur in using any such forged or counterfeit signature or seal, or shall tender in evidence any document with a false or counterfeit signature of such principal registrar or any such registrar, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for any term not exceeding ten years and not less than four years, or to imprisonment for any term not exceeding three years, with or without hard labour; s. 92.

Nothing in this Act contained shall affect the stamp duties now by law payable upon probates of wills and letters of administration; and all the clauses, provisions, rules, regulations, and directions contained in any Act of Parliament relating to the said duties, and to wills, probates of wills, and letters of administration, for securing the said duties, not superseded by or inconsistent with the express provisions of this Act, shall be in full force, and shall be observed, applied, and put in execution for securing the duties payable on the probates of wills and letters of administration granted under this Act, as if such duties had

been granted by this Act, and the said clauses, provisions, rules, and regulations relating thereto were herein repeated and specially enacted; s. 93.

The principal registrar shall, within a week after probate of any will or letter of administration shall have been granted, deliver or cause to be delivered to the Commissioners of Inland Revenue, or their proper officer, the following copies respectively; that is to say, in the case of a probate or administration with a will annexed, a copy of the will, and of the affidavit, with the schedule thereto, required by section 36 of this Act; and in the case of letters of administration without a will annexed, a copy of such affidavit and schedule; and in every case of letters of administration, a copy or extract thereof; upon payment for all such copies of such sum or sums of money or at such rate as the Lord Chancellor shall, with the approbation of the Commissioners of her Majesty's Treasury from time to time direct; s. 94.

It shall be lawful for the Lord Chancellor, by any order or orders to be from time to time made for that purpose, to order payment, at such times and in such manner as he shall think fit, out of the said fund called the "Testamentary Fee Fund Account," of all such sums as shall appear to him to be reasonable and proper to be paid for providing suitable rooms and buildings in which the business of the Court and the Testamentary Office may from time to time be carried on, and for keeping order, and for the care and cleaning of all such rooms and buildings, and for the rent, taxes, rates, insurance from fire, and other outgoings charged upon or payable for or in respect thereof, and for the enlargement, alteration, or improvement, repairs, furnishing and fitting up of the same, and for the temporary custody of such wills, administration bonds, notes of administration, Court books, calendars, papers, and documents as aforesaid, and for the books and stationery which may be required for the business of the Court and the Testamentary Office and the officers thereof, and for the making, writing, printing, counting, and examining official documents and records of the Court and offices, and other copies of such documents and records, and for coals and candles and other necessary articles for the offices; s. 102.

Every probate or administration granted by the Court with respect to the effects of any person dying domiciled in England or Wales shall be as valid and effectual with respect to the personal estate of the deceased in Ireland or Scotland as with respect to his personal estate in England or Wales; and in like manner every probate or administration granted by her Majesty's Prerogative Court in Ireland with respect to the effects of any person dying domiciled in Ireland shall be as valid and effectual with respect to the personal estate of the deceased in Great Britain as with respect to his personal estate in Ireland, and every confirmation in Scotland granted with respect to the ef-

fects of any person dying domiciled in Scotland shall be as valid and effectual with respect to the personal estate of the deceased in England, Wales, or Ireland as with respect to his personal estate in Scotland: Provided always, that no person transferring any personal estate to any person claiming under any such probate, administration, or confirmation as aforesaid shall be bound to inquire into the domicile of the deceased, if the fact of such domicile shall be stated on the face of the probate, administration, or confirmation, or be in anywise affected, though the domicile of the deceased may be untruly stated therein; s. 117.

In citing this Act in other Acts of Parliament, or any instrument, document, or legal proceeding, it shall be sufficient to use the expression "The Testamentary Jurisdiction Act, 1855;" s. 118.

This Act shall not extend to Scotland or Ireland, except where expressly mentioned; s. 119.

*Schedules referred to in the foregoing Act.*

SCHEDULE (A).

*Form of Affidavit and Schedule.*

In the Testamentary Court.

In the matter of the Estate of *A. B.*, deceased.

I, *C. D.*, [*Insert the names and residences, and the titles or professions, of the persons making the affidavit*], of the person [or one of the persons] applying for probate [or administration] of the [*Insert the nature of the grant, and description of the deceased*], late of deceased, make oath [*In case of Quakers, solemnly affirm*] and say as follows:—

1. The said *A. B.* died on or about the day of One thousand hundred and at [*Insert place of death, or set forth the reason why the same cannot be furnished*].

2. The personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which probate [or administration] is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*Insert as to leasehold estates, if any*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [*If no leasehold estates, insert so here*].

3. The Schedule hereunto annexed, to which I have set and subscribed my name, contains, to the best of my knowledge, information, and belief, the nature and description of the said personal estate and effects.

Sworn at  
Before me

SCHEDULE OF PERSONAL ESTATE.

	Value.
	£ s. d.
Household goods, linen, wearing apparel, books, plate, &c. at [ <i>State where situate.</i> ]	
Stock in trade, farming stock, and implements of husbandry at . [ <i>State where situate.</i> ]	
Property in the public stocks or funds transferable at the Bank or South Sea House . . . . .	
Leasehold property . [ <i>State where situate.</i> ]	
Property in public companies . [ <i>State what Companies.</i> ]	
Money out on mortgage and other securities [ <i>State what mortgages or other securities.</i> ]	
Other personal property, not comprised under the foregoing heads . [ <i>State the nature and description.</i> ]	

SCHEDULE (B.)

*Form of Probate.*

In the Testamentary Court.

Be it known, That on the day of 18, the last will and testament of *A. B.*, late of deceased, hereunto annexed, was proved and registered in the Testamentary Court, and that the administration of all and singular the goods, chattels, and credits of the said deceased, and any way concerning his will, was granted by the Court to *C. D.*, the sole executor named in the said will, he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all and singular the goods, chattels, and credits, and to exhibit the same into the Testamentary Office of the said Court on or before the day of 18, and also to render a just and true account thereof.

Sworn under £ , and  
that the testator died at  
in the county of on the  
day of 18 . (L.S.)

*Form of Letters of Administration.*

In the Testamentary Court.

Be it known, That on the day of 18, letters of administration of the goods, chattels, and credits of *A. B.*, late of , deceased, who died intestate, were

granted by the Testamentary Court to C. D.,  
 of \_\_\_\_\_, the widow of the said in-  
 testate, she having been already sworn well and  
 faithfully to administer the same, and to make  
 a true and perfect inventory of all and singular  
 the said goods, chattels, and credits, and to  
 exhibit the same into the Testamentary Office  
 of the said Court on or before the  
 day of \_\_\_\_\_ 18 \_\_\_\_\_, and also to render a just  
 and true account thereof.

Sworn under £ \_\_\_\_\_, and  
 that the intestate died at \_\_\_\_\_ }  
 in the county of \_\_\_\_\_ on the \_\_\_\_\_ }  
 day of \_\_\_\_\_ 18 \_\_\_\_\_ } (L.S.)

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### LUNACY REGULATION ACT, 1853, AMENDMENT.

18 VICT. c. 13.

Lord Chancellor, in matters of lunacy, enabled to empower Committees of estates to grant leases binding on issue or remainder-men; s. 1.

Interpretation; s. 2.

The following are the Title and Sections of the Act:—

An Act to explain and amend the Lunacy Regulation Act, 1853. [26th April, 1855.]

Whereas by the section numbered 129 of an Act passed in the 16 & 17 Victoria, entitled "An Act for the Regulation of Proceedings under Commissions of Lunacy, and the Consolidation and Amendment of the Acts respecting Lunatics so found by Inquisition, and their Estates," it was enacted, that where a lunatic is seised or possessed of or entitled to land in fee or in tail, or to leasehold land for an absolute interest, and it appears to the Lord Chancellor, intrusted as in the said Act mentioned, to be for his benefit that a lease or under-lease should be made thereof for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or otherwise improving the same, or for farming or other purposes, the Committee of the estate may, in the name and on behalf of the lunatic, under order of the Lord Chancellor, intrusted as aforesaid, make such leases of the land or any part thereof, according to the lunatic's estate and interest therein, and to the nature of the tenure thereof, for such term or terms of years, and subject to such rents and covenants, as the Lord Chancellor, intrusted as aforesaid, shall order: And whereas it has been considered that the Lord Chancellor, intrusted as aforesaid, cannot by force of the said enactment empower the Committee of a lunatic tenant in tail to grant leases as extensively as was intended by the said enactment, which will bind his issue in tail and the remainder-men: And whereas it is expedient

to explain and enlarge the power of the Lord Chancellor, intrusted as aforesaid, in the matter aforesaid: Be it therefore enacted as follows:—

1. Where a lunatic is seised of or entitled to land in tail, and it appears to the Lord Chancellor, intrusted as aforesaid, to be for his benefit, the Committee of the estate may in the name and on behalf of the lunatic, under order of the Lord Chancellor, intrusted as aforesaid, make any such leases of the land or any part thereof as in the said section of the said Act are mentioned, and every such lease shall be good and effectual in law against the lunatic and his heirs, and all persons claiming the lands entailed by force of any estate tail which shall be vested in such lunatic, and also against all persons, including the Queen's most excellent Majesty, her heirs and successors, whose estates are to take effect after the determination of or in remainder or reversion expectant upon such estate tail, according to such estate as is comprised and specified in every such lease, in like manner as the same would have been good and effectual in law if the lunatic at the time of the making of such leases had been lawfully seised of the same lands comprised in such lease of a pure estate in fee simple to his own use, and had been of sound mind, and not the subject of a Commission of lunacy, and had himself granted such lease; and every person to whom from time to time the reversion expectant upon the lease shall belong after the death of the lunatic shall and may have such and the like remedies and advantages, to all intents and purposes, against the lessee, his executors, administrators, and assigns, as the lunatic or his Committee would or might have had against him or them: And the powers given by sections numbered 130 and 131 of the said recited Act shall and are to operate as extensively as the power given by the said section 129 of the said Act as explained and enlarged by this Act.

2. Where any of the expressions in this Act are used in the said recited Act they shall receive the same interpretation in this Act as by the said recited Act is imposed upon them.

### COMMONS INCLOSURE.

18 VICT. c. 14.

Inclosures mentioned in schedule may be proceeded with; s. 1.

Short title; s. 2.

The following are the Title and Sections of the Act:—

An Act to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales. [26th April, 1855.]

Whereas the Inclosure Commissioners for England and Wales have, in pursuance of "The Acts for the Inclosure, Exchange, and

Improvement of Land," issued their provisional orders for and concerning the proposed inclosures mentioned in the Schedule to this Act, and have in their Tenth Annual General Report certified their opinion that such inclosures would be expedient; but the same cannot be proceeded with without the previous authority of Parliament: Be it enacted, as follows:—

1. That the said several proposed inclosures mentioned in the Schedule to this Act be proceeded with.

2. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use either the expression "The Annual Inclosure Act, 1855," or "The Acts for the Inclosure, Exchange, and Improvement of Land."

**SCHEDULE TO WHICH THIS ACT REFERS.**

<i>Inclosure.</i>	<i>County.</i>	<i>Date of Provisional Order.</i>
Kirkland . . . . .	Cumberland . . . . .	15th June, 1854.
North Coats . . . . .	Lincoln . . . . .	22nd June, 1854.
Bowerchalke . . . . .	Wilts . . . . .	22nd June, 1854.
Engollan Common . . . . .	Cornwall . . . . .	13th July, 1854.
Ulleskelf . . . . .	York . . . . .	4th October, 1854.
Thrandeston . . . . .	Suffolk . . . . .	9th September, 1854.
Milburn Fell Pasture . . . . .	Westmoreland . . . . .	8th June, 1854.
Ilkley Cow Pasture . . . . .	York . . . . .	4th October, 1854.
Great Boughton . . . . .	Chester . . . . .	18th May, 1854.
Melmerby . . . . .	Cumberland . . . . .	14th January, 1853.
Dymock . . . . .	Gloucester . . . . .	27th October, 1854.
Westwick . . . . .	Cambridge . . . . .	27th July, 1854.
Pendine . . . . .	Carmarthen . . . . .	3rd January, 1855.
Barnes . . . . .	Surrey . . . . .	3rd January, 1855.
Ramsden Bellhouse . . . . .	Essex . . . . .	11th January, 1855.
West Lulworth and Winfrith } Newburgh . . . . . }	Dorset . . . . .	18th January, 1855.
Bootle . . . . .	Cumberland . . . . .	17th January, 1854.
Penlline and Langan . . . . .	Glamorgan . . . . .	25th January, 1855.
The Wash Common . . . . .	Berks . . . . .	4th January, 1855.
Horsepath and Shotover . . . . .	Oxford . . . . .	26th January, 1855.

**LAW OF ATTORNEYS AND SOLICITORS.**

**TAXATION OF BILL, WHERE SPECIAL AGREEMENT.**

THIS was a petition for the taxation of a bill of costs presented by Mr. Lyddon, who had been formerly a solicitor, but had retired in 1844. It appeared that in 1849, he employed Mr. Ransom, a solicitor, who succeeded him in business, and that on January 29, 1849, Mr. Ransom had signed the following undertaking:—"Doe d. Sharland v. Roe, Richard Lyddon and others—I hereby undertake and agree to charge you only the different sums of money paid out of pocket by me in the above actions, or in any other business in which I may be concerned for you, provided you are unable to recover the proper costs in the above actions, or in any other business in which I may be concerned for you."

In 1853, the respondent had transacted some business for the petitioner, for which, in December, 1853, he delivered his bill of costs, amounting to 112*l*.

The petitioner insisted, that the respondent was only entitled to charge costs out of pocket, and he presented a petition for taxation on the footing of the above undertaking, and specifying items of alleged overcharge. The respondent, by his affidavit, denied that any part of the business in the bill of costs had been transacted upon the footing of the undertaking of 1849, but on the contrary, under the belief, impression, and understanding that he was to be paid in the usual way, as he said, Lyddon had promised him.

The Master of the Rolls said—"I think that the proper order to be made in this case is the common order to tax the respondent's bill of costs, reserving all the costs. I intend to express no opinion whether the Master ought to regard this agreement at all, or what construction he ought to put upon it. I cannot but feel there is a good deal of obscurity in the decisions on this subject; and I think it extremely desirable that the law upon it should be clear and distinct. I shall reserve the costs of taxation until the Master has made his certificate." *In re Ransom*, 18 Beav. 220.

# INFANTS' MARRIAGE SETTLEMENTS.

THE following is the Bill introduced by Mr. Malins to enable infants, with the approbation of the Court of Chancery, to make binding settlements of their real and personal estate on marriage. It recites that great inconveniences and disadvantages arise in consequence of persons who marry during minority being incapable of making binding settlements of their property: for remedy whereof it is proposed that—

1. From and after the passing of this Act it shall be lawful for every infant upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery, to make a valid and binding settlement or contract for a

settlement of all or any part of his or her property, whether real or personal, and whether in possession, reversion, remainder, or expectancy; and every conveyance and assignment of such real or personal estate, or contract to make a conveyance or assignment thereof, executed by such infant, with the approbation of the said Court, for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of 21 years.

2. The sanction of the Court of Chancery to any such settlement or contract for a settlement may be given, upon petition presented by the infant or his or her guardian, in a summary way, without the institution of a suit.

## ATTORNEYS TO BE ADMITTED.

*Trinity Term, 1855.*

### *Queen's Bench.*

#### *Clerks' Names and Residences.*

Austin, John Henry, 11, Castle-terrace, Kentish-town  
 Barton, Samuel Henry, 33, Store-street, Bedford-square; and Symond's-inn  
 Beaumont, John Alfred, 253, Hagley-road, Edgbaston  
 Beddome, John Arthur, 27, Nicholas-lane, Lombard-street  
 Blincoo, Valentine Budd, Pentonville; Leamington-priors; and Burton-latimer  
 Booth, John, jun., 15, Oxford-terrace, Old Kent-road; Arthur-street; and Sherburn-grange  
 Brennan, John, 51, Devonshire-street, Portland-place  
 Brooke, Richard Arnaud, 16, Tavistock-pl., Tavistock-square; Upper Albany-st.; and Liverpool  
 Brunskill, Jonathan Ward, 35, Holford-square, Pentonville; and Gibson-square  
 Cann, Edwin Newman, 4, Heathfield, Wandsworth-common; and Crystal-terrace  
 Cardale, Edward, 51, Torrington-square; and Bedford-house, Tavistock-square  
 Chapman, Lawrence Foster, Old-friars, Richmond  
 Davies, Henry Gilbert Rice, 2, Gloucester-terrace, Hyde-park; Calthorpe-st.; and Haverfordwest  
 Davison, Thomas John Robert, 9, March-place, Putney; and Worcester  
 Dickinson, John Abraham, 8, Duke-street, Portland-place; and Wells  
 Eddowes, Charles Kirk, 23, Davies-st., Berkeley-square; and Store-street  
 Evans, Robert, Ashton-under-Lyne  
 Faithfull, Henry, 1, Howard-place, Montpelier-road, Brighton  
 Farrar, Frederick Willis, 20, Austin-friars  
 Foulkes, Arthur David, 58, Grosvenor-street, Manchester  
 Gilchrist, Thomas Barnes, 5, New Ormond-street; Lloyd-street; and Berwick-upon-Tweed  
 Green, John Thomas, 32, Lincoln's-inn-fields; and Woburn  
 Halliday, Richard, Wakefield  
 Harrison, George, Newark-upon-Trent  
 Harrison, George Sandford, 22, Tavistock-place, Tavistock-square; John-street; and Richmond  
 Heard, Henry, 34, Southampton-row, Russell-square; Euston-grove; and Exeter

#### *To whom Articled, Assigned, &c.*

W. B. Ogden, St. Mildred's-court; T. Loughborough, Austin-friars  
 R. J. Child, Old Jewry  
 T. S. James, Birmingham  
 John Sims Weir, deceased, Nicholas-lane  
 T. Morris, Warwick; E. K. Blyth, Serjeants'-inn  
 H. J. Marshall, Durham  
 R. Dawes, Angel-court  
 G. J. Duncan, Liverpool  
 W. Bleaymire, Penrith; T. Johnston, Raymond-buildings  
 G. L. Norman, Yatton; J. Cann, jun., Lincoln's-inn-fields  
 J. B. Cardale, Bedford-row  
 B. Field, Lincoln's-inn; H. Toogood, Parliament-street  
 J. R. Powell, Haverfordwest  
 J. B. Hyde, Worcester  
 D. S. Bockett, Lincoln's-inn-fields  
 F. Jessopp, Derby  
 R. W. Peck, Ashton-under-Lyne  
 G. Faithfull, Brighton  
 M. Tatham, Austin-friars  
 J. W. Weston, Manchester  
 T. Gilchrist, Berwick-on-Tweed; W. Willoby, Berwick-on-Tweed  
 J. Green, Woburn  
 S. F. Harrison, Wakefield  
 R. Caparn, Newark-upon-Trent  
 J. B. Simpson, Richmond  
 T. E. Drake, Exeter

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

Heath, Edward, jun., 8, Southgate-grove, Southgate-road	E. Heath, Manchester
Heelas, Wilberforce, 4, New North-street, Red-lion-square; and Southampton	J. C. Sharp, Southampton
Holden, John Geo., 99, Mount-street, Grosvenor-square; and Liverpool	J. Holden, Liverpool
Hooper, Edwin, 21, Doddington-grove, Kennington-park; and Harleyford-place	H. W. Hooper, Exeter; J. E. Fox, Finsbury-circus
Hooper, Wm. Henry, 14, Featherstone-buildings; and Clerkenwell	H. A. Templer, Bridport
Hough, William Henry, 20, Argyle-square; and Lincoln's-inn-fields	H. Hough, Oakham; F. Charaley, Amersham
Jackson, John Beynon, 15, Middle-road, Brixton	R. Jackson, Bedford-row
Jones, John Cox, 26, Bedford-place, Russell-sq.; and Leamington-priors	A. Haymes, Leamington-priors
Jones, John Stanier, Portmadoc	J. Jones, Dolgelly and Portmadoc
Ladd, Thomas Henry, 50 A., Trinity-square; and Liskeard	J. Sargent, Liskeard
Lambe, John, 24, University-street, Tottenham-court-road; and Usk	C. Blount, Usk
Latimer, John, 7, Park-row, Leeds	J. Atkinson, Leeds; A. Horsfall, Leeds
Leaf, Alfred, 9, Leaf-square, Pendleton, Manchester; and Lymm	E. Cunliffe, Manchester
Leather, Leonard Stanger, 2, Stockwell-place, Clapham-road	Domville and Lawrence, New-square
Lowndes, Francis Dobson, 49, Edge-lane, near Liverpool	W. G. Bateson, Liverpool
Malleson, Alfred Brooks, 6, Craven-street, Strand; and Old-square, Lincoln's-Inn	J. N. Malleson, Austin-friars
Mason, George, 14, Lower Hope-place, Liverpool	W. Holt, Liverpool
Miller, Daniel James, 10, Lawn-place, South Lambeth; and Kensington-terrace	T. Surr, Lombard-street
Moore, William, Playters, 49, Liverpool-street, Argyle-square; and Upper Cumming-street	F. G. Abbott, Southampton-buildings
Munby, John Forth, 24, University-street; and Clifton	J. Munby, York
Newman, William, 8, Princes-street, Bedford-row	E. Newman, Yeovil; W. E. Oliver, New-bridge-street
Nicholson, George, 22, Tavistock-square; Guildford-street; and Richmond	J. B. Langhorne, Richmond
Oddie, Edward, 65, Portland-place; and Piccadilly	F. I. Nicholl, Carey-street
Palmer, W. Danby, jun., 15, New Ormond-street, Queen's-square; and Great Yarmouth	H. Palmer, Great Yarmouth
Parsons, Joseph Whiteway, 2, Powell-street, West, King-square	W. T. Langley, Shaldon; J. B. Bullock, Lincoln's-inn-fields
Pearson, Frances Fenwick, 35, Bedford-place; Kirkby Lonsdale; Norfolk-street; Hardwick-pl.	F. Pearson, Kirkby Lonsdale; B. Holme, New-iam
Pickop, John, London-terrace, Blackburn	W. M. Perfect, Blackburn
Pinchard, J. H. Biddulph, 4, Great Russell-st., Bloomsbury; and Taunton	W. P. Pinchard, Taunton
Plumer, John Bagwill, 11, Harleyford-place, Kennington	J. C. Symes, Fenchurch-street
Popplewell, Henry John, Gainsborough; Potterneton; and Leeds	W. Plaskitt, Gainsborough
Powell, Gabriel William, Ashby-road, Islington; and Cantroff-rectory, Breconshire	D. Thomas, Brecon
Powell, Phillip John, 28, Mornington-road, Regent's-park; and Lincoln's-inn-fields	J. B. Bullock, Lincoln's-inn-fields
Prescott, Byam Martin, 29, Wakefield-street, Regent's-square; and Chippenham	T. A. Fellowes, Chippenham
Preston, Thomas Hartley, 13, Anon-street, Pembroke-place, Liverpool	J. G. Snowball, Liverpool
Richardson, James Coke, 17, Chenies-street, Tottenham-court-road; and Clifton	J. Richardson, York
Rixon, Augustus, William, 32, Gordon-square	W. Rixon, King William-street
Roberts, Samuel, Waltham-cross	H. Jackson, St. Helen's-place; F. W. Mount, Clement's-lane
Rodway, George Wood, Trowbridge	R. Rodway, Trowbridge
Rutter, Llewellyn, 46, Great Ormond-street	J. F. Rutter, Shaftesbury
Saunders, Thomas, 44, Regent-square; and Devonshire-street	C. F. Chubb, South-square
Shaw, Thomas William, 77, Charrington-street, Camden-town	S. Tripp, Argyle-street



## Clerks' Names and Residences.

## To whom Articled, Assigned, &amp;c.

Slade, George Penkivil, 1, Lloyd-sq., Pantenville	J. Slade, Yeovil; G. Robins, New-inn
Smith, George Henry, 24, Coney-street, York	R. H. Anderson, York
Squire, Edmund Burnard, Aberdeen-house, Lower-heath, Hampstead; and Great Yarmouth	W. Worship, Great Yarmouth
Stewart, William James, New Millman-st.; Lasswade; and Needham-market	J. B. Tippetts, Sine-lane; R. F. Bartrop, Kingston-on Thames
Symonds, John Hargrave, Park-place, Leyton; Stamford-hill; and Aldgate	R. B. Baker, Crosby-square
Taylor, Henry Ramsay, 2, Castle-street, Holborn	J. Taylor, Castle-street
Taylor, Robert, 15, Farnival's-inn; and Ravenswood, Croydon	J. Taylor, Farnival's-inn
Thompson, Robert Fisher, 105, Upper Stamford-street; Kirkby Lonsdale; Lancaster; and Regent's-terrace	F. Pearson, Kirkby Lonsdale
Tozer, Henry, 2, Mylne-street, Claremont-square	J. Edgar, Weston-super-Mare; W. Jones, Crosby-square
Waldy, Henry Temple, 53, Albemarle-st., Piccadilly	K. Barnes, Spring-gardens
Waterhouse, James William, 9, Blomfield-road, Paddington	D. S. Bockett, Lincoln's-inn-fields
Waters, Robert John, 29, Alfred-place, Bedford-square; York-place; and Bungay	W. Hartcup, Bungay
Way, William Augustus, Stamford-st., Bouverie-street; and Portsmouth	H. G. Way, Portsmouth
Wells, James, 5, Victoria-terrace, Stockwell; and Moxley	C. G. Brown, Bilston
Whitford, Edward, 45, Mornington-rd., Regent's-park; Frederick-street; and St. Columb	T. Whitford, Saint Columb
Whitlow, Edward Hardman, 2, Harley-street, Bow; and Manchester	J. Janion, Manchester
Williams, Edward, 7, Royal-fort-road, Bristol; Hallatrow; Van Diemen's Land	B. Chandler, jun., Sherborne; W. Williams, Hallatrow; J. Hill, Paulton
Williams, Robert Edward, 14, Calthorpe-street, Gray's-inn-road; and Denbigh	R. Williams, Brompton, Denbigh
Wilson, John James, 11, East-street, Lamb's-conduit-street; and Stockton-upon-Tees	J. R. Wilson, Stockton-upon-Tees; W. Murray, London-street
Wood, Henry, 2, Tavistock-street, Bedford-sq.; and York	J. Wood, York
Wood, William Savile, 13, Hill-marton-villas, Camden-road; and Easingwold	W. Wood, Pontefract; J. Hazby, Easingwold
Yarde, John, 28, Lamb's-conduit-street	J. Whidborne, Teignmouth
Yearsley, William Pryse, 6, Bond-st., Claremont-square; Amwell-terrace; and Soley-terrace	W. Yearsley, Welchpool

## NOTICES OF ADMISSION FOR TRINITY TERM, 1855.

*Added to the List pursuant to Judge's Orders.*

Hooper, Thomas James, Warwick-court, Holborn; 90, Ebury-street; Reading; Clifton; Teignmouth; Plymouth; Newport; Monmouth; Brechin; and 10, Bedford-street, Bedford-row	Henry Sewell, Upton-upon-Severn
Peace, Maskell William, Wigan	John Mayhew, Wigan
Rising, William Henry, 9, Burton-street, Eaton-square; and Rotherham	W. E. Hoyle, Rotherham
Williams, Edward Withers, 27, Albert-street, Regent's-park; and Truro	P. P. Smith, Truro

## NOTES OF THE WEEK.

## HOUSE OF LORDS.

May 4, 1855.

RESOLVED, That this House will not read any Bill a second time after Tuesday the 24th of July, except Bills of Aid or Supply, or any Bill in relation to which the House shall have resolved before the second reading is moved, that the circumstances which render legislation on the subject of the same expedient, are either of such recent occurrence or urgency as to render the immediate consideration of the said Bill necessary.

## CHANCERY NOTICE.—WHITSUN VACATION.

DURING the Whitsun Vacation the Chambers of the Vice-Chancellor Sir John Stuart will be open on the following days, viz. :—

Friday, 11th May;  
Tuesday, 15th May;  
Wednesday, 16th May;  
Thursday, 17th May; and  
Friday, 18th May;

From 11 till 1 o'clock, to dispose of applications for time.

The Vacation will commence on the third day after Easter Term, and terminate on the second day before Trinity Term.

## LAW APPOINTMENTS.

Mr. Thomas John Reynolds, Solicitor, has been appointed Clerk to the Burial Board of Chipping Wycombe.

Mr. Henry Smales, jun., Solicitor, of Durham, has been appointed Clerk to the Magistrates of the Western Division of Chester Ward.

Mr. John Trenfield, Solicitor, of Chipping Sodbury, has been appointed Clerk to the Trustees of the Marshfield Division of Turnpike Roads.

Helier Simon, Esq., Solicitor of the Royal Court, has been appointed Deputy Sheriff of Jersey, in the room of G. H. Horman, Esq., called to the Bar of Jersey.

Mr. James Edward Goddard Bradford, Solicitor, has been appointed Clerk to the Guardians of the Highworth and Swindon Union

and Superintendent Registrar, in the room of Mr. Alfred Southby Crowdy, resigned.

Mr. John Blaikie, Advocate, has been appointed Commissary Clerk at Aberdeen.

Mr. John Elliot Boileau, Barrister-at-Law, has been appointed Private Secretary to Lord John Russell, at the Colonial Office.

## IRISH LAW APPOINTMENTS.

The following gentlemen have been appointed supernumerary Crown Prosecutors in Ireland:—

Mr. Piers Francis White for the County and City of Kilkenny.

Mr. Peter John M'Kenna for the County of Meath.

Mr. James Leech Talbot for Queen's County.

Mr. James Farrell for the South Riding of the County of Tipperary.—*Morning Herald*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Master of the Rolls.

*Morland v. Isaacs.* April 26, 1855.

DEBTOR AND CREDITOR.—INSURANCE.—PREMIUMS.

*A creditor effected an insurance on the life of his debtor, who paid the first two premiums, and the creditor afterwards kept up the policy: Held, that on the debtor's death, the creditor was only entitled to his original debt and the premiums paid by him, and not to the whole sum insured.*

It appeared that the defendant had effected a policy of assurance for 500*l.* on the life of Lieutenant Walker, who was indebted to him in a considerable sum, and that the first two premiums had been paid by Lieutenant Walker, and the others by the defendant. On the debtor's death the defendant claimed the whole amount of the policy, and the representative of Lieutenant Walker, after having offered to pay the defendant the original debt and premiums paid by him, instituted this suit.

*Bright* for the plaintiff; *Roupell* and *Hadow* for the defendant.

The Master of the Rolls said, that the defendant had no claim beyond the amount of his original debt and premiums he had paid, and made a decree for the plaintiff, with costs.

## Vice-Chancellor Kindersley.

*Alston v. Sims.* April 21; May 8, 1855.

SOLICITORS.—PARTNERSHIP.—PAYMENT BY PARTNER.

*One of two partners, who were solicitors, paid a sum of money to make up a deficiency in the account of his deceased partner, the steward and receiver of the quit rents of manors. It appeared that, although the*

*deceased partner had the exclusive management of the manorial property, the profits formed part of the partnership assets: Held, that inasmuch as the offices of steward and receiver were strictly personal, the payment by the partner was not recoverable as a partnership debt between the partners inter se, but that it must be treated like the demand of a third person, a stranger to the partnership.*

It appeared on this adjourned summons from Chambers, that Mr. William Sturgeon Sims, who carried on business with Mr. Thomas Unwin, as solicitors at Bishops Stortford, held the offices of steward and receiver of the quit-rents of certain manors, and that it was agreed that, although he should have the exclusive management of the property, the profits should form part of the profits of the partnership. Upon the death of Mr. Sims, there was a deficiency, which Mr. Unwin paid, and now claimed the amount as a partnership debt in taking the account.

*Eddis* contended it was a private debt, citing *Esparte Burdekin*, 2 Mont., Deac. & De G. 704; *Greene*, contra.

*Cur. ad. vult.*

The Vice-Chancellor said, that as the offices of steward and receiver were strictly personal, the debt was not recoverable between the partners *inter se* as a partnership debt, but must be treated like the demand of a third person, a stranger to the partnership.

*Quested v. Michell.* May 5, 1855.

WILL.—CONSTRUCTION.—ABSOLUTE OR LIMITED INTEREST.—“ASSIGNS.”

*A testator gave a sixth of the residue of his real and personal property to the use of his trustees during the natural life of his niece upon trust, subject to certain pay-*

*ments, to pay the clear yearly rents, &c., as the same should become due, and not by way of anticipation to his niece and her assigns for her natural life, and after her decease unto her heirs, executors, administrators, and assigns, according to the several natures and qualities thereof:*

*Held, that the niece took an absolute, and not a limited interest in both the realty and personality.*

THE testator, the Rev. William Lade, by his will, gave all his real and personal property to trustees in trust, to get in the same and to pay out of the proceeds all his debts, funeral and testamentary expenses, legacies and annuities, and subject thereto to pay the residue among his six nephews and nieces. The bequest to one of the nieces, on which a question was now raised, was to the following effect: and as to the remaining sixth part unto and to the use of the trustees during the natural life of his niece Lucy Masham, upon trust, subject to the payment of rates and taxes, and the costs and charges of repairs and insurances, and other incidental outgoings and expenses, to pay the clear yearly rents, issues, and profits, dividends and interest, as the same should become due, and not by way of anticipation to the said Lucy Masham and her assigns for her natural life, and from and after her decease unto her heirs, executors, administrators, and assigns, according to the several natures and qualities thereof.

*Glasse and G. Simpson for the trustees; Baily and Busk for the niece; W. D. Lewis for two other parties in the same interest; Surrage, Wood, and Waller for other persons.* The Vice-Chancellor said, that the use of the word "assigns" conferred an absolute and not a limited interest both in the realty and personality.

#### Vice-Chancellor Wood.

*Gabb v. Prendergast.* April 19, 25, 1855.

SETTLEMENT.—CONSTRUCTION OF.—"CHILDREN."—ILLEGITIMATE.

*A settlement contained a trust of property for all and every the child and children then already or thereafter to be born of R. and his wife. It appeared that they had five children, all born before marriage, at the date of the deed, and that there were no legitimate children: Held, that such illegitimate children were entitled to the benefit of the settlement.*

By a settlement dated in 1816, certain property was settled subject to certain limitations (which had failed) in trust for the benefit of all and every the child and children then already or thereafter to be born of Mr. Roland and his wife. It appeared that Mr. and Mrs. Roland had five children, all of whom were born before their marriage in the year 1811, and that none were afterwards born. The question now raised was whether the settlement extended to these illegitimate children.

*Shapter for the plaintiffs; Selwyn and J. H. Taylor for the children; Hoare for other parties.*

*Cur. ad. vult.*

The Vice-Chancellor said, that under the circumstances of there being no legitimate children who could take the benefit intended to be given by the settlement and of the words already born being used, the word "children" would be implied to mean illegitimate children, and declaration accordingly.

*Harkwood v. Lockerby.* May 8, 1855.

ATTACHMENT.—SERVICE IN ISLE OF MAN.—WANT OF APPEARANCE AND ANSWER.

*A motion ex parte was refused for the issue of an attachment for default of appearance and answer against a defendant, who had been served in the Isle of Man with the copy bill and interrogatories.*

THIS was a motion for liberty to the Clerk of Records and Writs to issue an attachment for default of appearance and answer against the defendant, who had been served in the Isle of Man with the copy bill and interrogatories. It appeared that he had been to Liverpool, but had returned to the Isle of Man without entering an appearance.

*Giffard in support.*

The Vice-Chancellor said, that the case must be governed by the Statutes (2 Wm. 4, c. 33, and 4 & 5 Wm. 4, c. 82), enabling service out of the jurisdiction, and the Court could not go beyond the powers conferred thereunder. Besides the application was so novel that it could not be granted *ex parte*. The case might, however, be mentioned to the Lords Justices.

#### Court of Queen's Bench.

*Regina v. Tibble.* April 25, 1855.

WATERMAN'S ACT.—WHAT A "WESTERN BARGE."—CONVICTION.

*The defendant, who was in the employ of the Great Western Railway, took certain goods from Brentford creek to Putney in a flat-bottomed barge, commonly called a "western barge." By s. 101 of the 7 & 8 Geo. 4, c. lxxv., a "western barge" is exempted from the prohibition of s. 37 against any person working any "wherry, lighter, or other craft," who is not a freeman of the Waterman's Company or an apprentice, and a "western barge" is defined to be a flat-bottomed boat or barge navigated from Kingston or any place beyond: Held, that the conviction must be affirmed.*

THIS was a conviction under the 7 & 8 Geo. 4, c. lxxv., s. 37,<sup>1</sup> against the defendant for

<sup>1</sup> Which enacts, that "if any person, not being a freeman of the said company, or an apprentice to a freeman or to the widow of a freeman of the said company (except as hereinafter is mentioned), shall at any time act as a waterman or lighterman, or ply, or work, or na-

working a lighter on the river Thames for hire, he not being a freeman of the Waterman's Company or an apprentice. It appeared that the defendant was in the employ of the Great Western Railway Company, and had taken certain goods for them to Putney from Brentford creek, in a flat-bottomed barge called "a western barge." The question now reserved was, whether such a barge was within the exemption of s. 101, which enacts, that "nothing in this Act contained (except the provisions for compelling the names of the barge or craft, and the name and place of abode of the owner, to be painted and preserved thereon as aforesaid) shall extend to any western barges; and that all flat-bottomed boats or barges navigated from the town of Kingston, in the county of Surrey, or any place or places beyond the said town, shall be deemed western barges, and shall and may be navigated on the said river Thames as far as London bridge."

Scotland in support of the conviction; *Bramwell* and *Digby*, contra.

The Court said, that as the appellant, not being a freeman, was navigating a lighter for hire on the river, and which was not a western barge within the definition contained in s. 101, the conviction must be affirmed.

#### Queen's Bench Practice Court.

(Coram Coleridge, J.)

*Hesketh v. Fleming.* May 5, 8, 1855.

COMMON LAW PROCEDURE ACT, 1852.—  
WRIT OF SUMMONS SPECIALLY INDORSED.  
—DEFENDANT OUT OF JURISDICTION.

At the time of the issue of a writ specially indorsed in the form No. 1 under s. 2 of the 15 & 16 Vict. c. 76, the defendant was out of the jurisdiction, but a Judge's order had been obtained for liberty to the plaintiff to proceed unless an appearance were entered within seven days from service thereof: A rule was made absolute to set aside the Judge's order and the proceedings thereunder.

This was a rule nisi to set aside the order of *Williams, J.*, at chambers, under the 15 & 16 Vict. c. 76, s. 17, for leave to proceed with the writ of summons which had been specially indorsed under s. 36, and was in the form No. 1 of schedule (A) under s. 2 of the Act. The order had been made upon an affidavit that personal service could not be effected owing to the conduct of the defendant, and directed that unless the defendant, within seven days after service thereof, should cause an appearance to be entered, the plaintiff should be at liberty to proceed. This rule had been obtained within the seven days

vigate, or cause to be worked or navigated, any wherry, lighter, or other craft, upon the said river, from or to any place or places, or ship or vessel within the limits of this Act, for hire or gain (except as hereinafter is mentioned), every such person shall forfeit and pay for every such offence any sum not exceeding 10*l.*"

on an affidavit that the defendant was at the time of the issue of the writ resident in France out of the jurisdiction; and that the writ should have been in the form No. 2 in Schedule A, as provided by s. 18.

*Lush* showed cause against the rule, which was supported by *Kemplay*.

*Cur. ad. ult.*

The Court said, that there were two forms in which a writ of summons might be issued under the Act, the one applicable to parties resident within the jurisdiction and requiring an appearance to be entered within eight days, and the other providing for cases where the defendant, being a British subject, resided out of the jurisdiction of the Court, and in which case the time for entering an appearance was left to the discretion of the Judge. The rule would therefore be made absolute to set aside the Judge's order and the proceedings thereunder.

#### Court of Common Pleas.

*Butcher v. London and South Western Railway Company.* April 26, 1855.

RAILWAY CARRIERS.—LOSS OF LUGGAGE.—  
DELIVERY.—QUESTION FOR JURY.

The question as to the perfect delivery of luggage at a railway station, is one for the jury.

Therefore, where the plaintiff on his arrival at the terminus had had his luggage delivered to him, but had afterwards accepted the offer of one of the railway porters to get a cab, and the porter had placed the plaintiff's bag in the cab, which drove off, and the bag was lost: Held, that the plaintiff was entitled to recover.

This was a rule nisi granted on April 16 last, pursuant to leave reserved, to set aside the verdict for the plaintiff and to enter a nonsuit, in this action, which was brought by a passenger on the defendants' railway, to recover for the loss of his leathern bag. It appeared on the trial at Kingston, before *Maule, J.*, that the plaintiff, on arriving at the Waterloo Bridge Station, had had his luggage delivered to him, and which consisted of a trunk and leathern bag, and that a railway porter had come up and offered to take his luggage and get a cab. Upon his doing so, the cab drove away with the bag while they were returning for the trunk. The plaintiff obtained a verdict with 400*l.* damages, subject to this motion.

*M. Chambers* and *Lush* showed cause against the rule, which was supported by *Bovill*.

The Court said, that the question whether there was a perfect delivery was one for the jury. It appeared that an officer of the company had taken the bag from the plaintiff. The case was governed by *Richards v. London, Brighton, and South Coast Railway Company*, 7 Com. B. 839. The rule was therefore discharged.

*Ex parte Newton.* May 4, 5, 1855.

**HABEAS CORPUS.—MOTION FOR.—WHO MAY APPEAR ON.**

Held, that the father, although formerly a barrister, could not appear in support of a motion for a habeas corpus to discharge his son from custody for a misdemeanor,—such motion must be made by counsel or attorney.

THIS was a motion for a writ of habeas corpus for the discharge of the defendant, Francis Robert Newton, who was in custody under a conviction for an assault.

A. Newton, who was formerly a barrister, in support.

The Court, after inquiring in what capacity he applied, and on being informed in that of father and agent of the prisoner, said that there was only one instance where any but a counsel or attorney had been allowed to make a similar application *In re Cobbett*, and which was different to the present case. Without laying down any indisputable rule, the motion had better be made by counsel in the ordinary way.

*Ex parte Newton.* May 5, 1855.

**HABEAS CORPUS.—DISCHARGE FROM CUSTODY.—TRAVERSABLE AVERMENT.**

A motion for a writ of habeas corpus to discharge the defendant from custody under a conviction for an assault at N., on the ground that N. was not within the jurisdiction of the Central Criminal Court, was refused, the averment on the record of jurisdiction being traversable.

THIS was a motion for a habeas corpus to discharge the prisoner from custody under a conviction at the Central Criminal Court, for an assault on Mr. Kennedy at the Beulah Spa, Norwood. It appeared that that place was out of the jurisdiction of the Central Criminal Court, being in the parish of Croydon and not of Lambeth, and that the Attorney-General had refused his fiat for a writ of error in accordance with *Rex v. Carlile*, 2 B. & Ad. 971, and an application for a *mandamus* to the Queen's Bench on the Attorney-General to grant such fiat, had also been refused (reported *ante*, vol. xlix., p. 506).

W. H. Hodgson in support, citing *Ex parte Bailey*, 23 Law J., N. S., Q. B. 353.

The Court said, that the averment of jurisdiction in the record was traversable, and was either traversable under a plea of "Not guilty," or if pleadable, was waived by the defendant having pleaded over. If the averment were traversed by the plea of *not guilty*, it had been found by the verdict that the offence was committed within the jurisdiction. But if the record was wrong, the proper remedy was by application to the Attorney-General for a writ of error *coram nobis*, and as on this subject the Attorney-General had exercised his discretion, he could not be compelled to grant his fiat, and the defendant might then appeal to the prerogative of the Crown. The application would be, therefore, refused.

**Court of Exchequer.**

*Brown v. Robinson.* April 20, 1855.

**NEW TRIAL ON GROUND OF SURPRISE AND EXCESSIVE DAMAGES.—AFFIDAVIT IN SUPPORT.**

In an action for crim. con., a motion for a rule nisi to set aside the verdict for the plaintiff and for a new trial on the ground of surprise and that the damages were excessive, was refused, although on the former trial the defendant obtained a verdict, where the defendant had not made an affidavit of the truth of the state of the circumstances on which he relied.

The rule was also refused on the ground of excessive damages, the presiding Judge being satisfied with their amount, and it not being shown that the jury acted from a corrupt and wrong motive.

THIS was a motion for a rule nisi to set aside the verdict for the plaintiff and for a new trial in this action of crim. con., on the ground of surprise and that the damages (500*l.*) were excessive. A rule for a second trial has been made absolute (reported *ante*, vol. 49, p. 384). The evidence in question was that of a cabman, against several of whose statements the affidavit of his master was read.

Watson in support.

The Court said, that a new trial on the ground of surprise was never granted where the defendant had not made an affidavit pledging himself to the truth of the state of circumstances on which he relied; and as to the damages being excessive, unless it was perfectly clear that the jury had acted from a corrupt and wrong motive, the Court would not grant a new trial. Mr. Justice Cresswell was also quite satisfied with the verdict and the amount of damages, and the rule would therefore be refused.

*Builer v. Meredith.* May 8, 1855.

**EJECTMENT.—DEFENCE BY LANDLORD, ALTHOUGH ABROAD.—SECURITY FOR COSTS.**

Held, that a landlord is entitled to come in and defend in an action of ejectment, without giving security for costs, although abroad—per Pollock, L.C.B., and Platt and Martin, B.B., dissentiente Parke, B.

THIS was a rule nisi to rescind an order made by Coleridge, J., at Chambers, requiring security for costs to be given by the landlord, who was abroad, upon leave being granted to defend this action of ejectment against the tenant in occupation.

Garth showed cause against the rule, which was supported by J. P. Wilde.

The Court (per Pollock, L.C.B., and Platt Martin, B.B., dissentiente Parke, B.) said, that although the practice might formerly have been perhaps different, the provisions of the new Act absolutely entitled the landlord, whether abroad or not, to come in and defend without any terms or conditions, and the rule would accordingly be made absolute.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

~~~~~  
—"Still attorneyed at your service."—*Shakespeare*.  
~~~~~

SATURDAY, MAY 19, 1855.

### PROGRESS OF LEGISLATION.

LOOKING at the advanced stage of the Session, and the near approach of the Whitsun Holidays, the Profession must feel indebted to Lord St. Leonards, the Lord Chancellor, and Lord Lyndhurst, for bringing to the notice of the House of Lords, on the 11th instant, several of the important subjects now under the consideration of Parliament. It is very material that the alterations which are really intended to be made should be kept in mind, and if the Government have determined to carry forward any of these measures, the Profession should direct their continued attention to them. We shall notice the subjects in the order which appear to us the most essential for legal consideration.

#### 1. THE ECCLESIASTICAL COURTS.

The Testamentary Jurisdiction Bill, it should be observed, is not the only measure affecting the Ecclesiastical Courts and the arrangements to be made with the advocates and proctors who practise therein. There is also the Jurisdiction in Marriage and Divorce Cases and Clerical Discipline, and especially in Admiralty Causes. It is manifest that the compensation to the practitioners cannot be satisfactorily settled without considering all the branches of the Ecclesiastical Courts. The proof of wills and the grant of administrations of intestates' estates will not alone settle the matters in question relating to Doctors' Commons. We avail ourselves of the remarks made in the House of Lords on the 11th instant on these topics.

Lord St. Leonards observed, that the Testamentary Jurisdiction Bill having been very fully considered before a Select Com-

mittee of the House of Lords during the last Session, and the measure having received the sanction of their lordships, was sent to the other House of Parliament. The House of Commons, however, did not pass the measure, and it appeared to him that the proper course to have pursued this Session would have been to re-introduce the bill in their lordships' House; but that not having been done, Lord St. Leonards called on the Lord Chancellor to state what were the intentions of the Government with respect to the other branches of the Ecclesiastical Courts:—

"He wanted to know what was to become of the Arches' Court; and he hoped they would not be called upon to offer any opinion upon individual features in the proposed plan of legal reform until the whole plan had been submitted to them. A promise had been made that a general plan for reform of the Ecclesiastical Courts would be brought forward. Now, what he feared would take place was this—that the Testamentary Jurisdiction Bill would pass in some shape or other without their having had an opportunity of considering the general scheme unaffected by the decision of the other House of Parliament upon a most important part of it. No one could form a satisfactory opinion as to whether a measure was applicable to the whole jurisdiction without a knowledge of all its features. In reference to the Testamentary Jurisdiction Bill there was some reason to complain that no information had been given by her Majesty's Government as to the amount of compensation to be paid under it. He had heard it, however, estimated at from 140,000*l.* to 150,000*l.* Now that was a very large sum of money, and would have to be paid by the suitors from estimated savings in other directions. At the same time he could not help thinking that it required a great deal of sound argument to show how such a burden could be properly placed upon the suitors at all."

The *Lord Chancellor*, in reply to this part of Lord St. Leonard's inquiry, observed—

"That the Testamentary Jurisdiction Bill had been first introduced this session in the other House of Parliament, inasmuch as their lordships' approval had been already conceded to that measure. He had reason to believe that in its present shape, altered as it was from the measure which had been before their lordships, it would receive the sanction of the House of Commons, and would, therefore, be the less discussed when before them. As to the extent of the compensation to be paid to the proctors, he was not prepared to state its exact amount, though he did not think it could be so much as 140,000*l.* Perhaps 100,000*l.* would not be more than would be required. He hoped, however, that the amount, whatever it was, would be provided for by continuing the probate fees at present paid to proctors until such time as the compensation was paid off, and it was calculated that from that source, during a limited time, a sufficient fund would be produced to avoid the imposition of further hardships upon the suitors. He admitted that, to a certain extent, the other reforms of the Ecclesiastical Courts were mixed up with the Testamentary Jurisdiction Bill; still, upon the whole, they must stand upon their own footing.

"With regard to the *Divorce Bill* of last Session, he could inform their lordships that he had prepared a precisely similar Bill for introduction this Session as soon as the Testamentary Jurisdiction Bill should have been sanctioned. There was no connexion, in fact, between the Testamentary Jurisdiction Bill and the *Church Discipline Bill*, which was a question of a purely spiritual nature. It might, indeed, be thought necessary to pass the former measure and leave the latter untouched. The Government had, however, prepared a new *Church Discipline Bill*, which they had submitted to the consideration of the bishops, some of whom had approved of it, while others had disapproved of it. He had been engaged during the last few days in endeavouring to find out what these exact points were of which the bishops generally disapproved, with a view of modifying the measure so as, if possible, to render it generally acceptable."

It may be true that the jurisdiction in regard to Divorce and Church Discipline are quite distinct from the Testamentary branch of the Ecclesiastical Courts, but the practitioners are the same, and the mode of proceeding similar. It would be a very incomplete measure of reform unless all departments of the Ecclesiastical Courts, and their several Judges, officers, and practitioners were included in the plan. We wait, therefore, for the other measures

which must be brought forward before the Testamentary Bill can be passed.

## 2. PROFESSIONAL REMUNERATION.

Our readers will have observed that Lord Lyndhurst has again brought the subject of the rules of taxing Solicitors' costs before the House of Lords.

Lord St. Leonards observed, in the course of the debate, that when he had the honour of holding the seals of office he had approved of a certain scale of fees for the Solicitors practising in his Court. His noble and learned friend Lord Lyndhurst had, however, disapproved of that scale, and its revision was contemplated by the noble and learned lord on the woolsack. Now, speaking generally on the subject, he would say that it was much easier to increase a scale of charges than to reduce one after it had subsisted for a certain period. The complaint—and no doubt the just complaint—of the solicitors was, that while there was a great deal of unimportant and easily executed business for which they were too well remunerated, there was, on the other hand, a great deal of business well executed for which they were not adequately paid.

Lord Lyndhurst wished to explain that his objections to the present scale of fees in the Court of Chancery were based upon this principle; that costs were taxed according to the length of the proceedings; so that a bounty was thus held out to Solicitors to lengthen proceedings as much as possible, and their interests and the interests of the suitors became consequently opposed. What he desired to see brought about was that the scale of remuneration should have regard not to the length of proceedings, but to the value of work done.

The *Lord Chancellor* said that the whole question of costs was under inquiry.

## 3. SALES AND LEASES UNDER SETTLEMENTS.

The *Lord Chancellor*, on introducing this Bill, the principal clauses of which are given in a subsequent page, observed, that a very large, if not the greater portion of the landed property of this country was held by persons who were not the absolute owners in fee-simple, but who had a limited interest in it. The consequence of this settlement of property was, that a person, not being the absolute owner, was unable to deal with property in the manner perhaps most beneficial to his family or the community at large. Some evils might result from settle-

ments, but on the whole he thought that marriage and other settlements had conduced to the welfare, not only of individuals, but of society at large. It was to meet the difficulties and expense attending the present method of obtaining leasing powers under settlements by Act of Parliament that he asked leave of their lordships to introduce this measure. The present method of obtaining Acts of Parliament was objectionable, not only on the ground of expense, but because it was impolitic to mix up judicial with legislative matters. These private Acts of Parliament were objectionable on the score of expense. He had caused 16 private Bills for the leasings, &c., of estates to be furnished to him, and found the cost to be 1,270*l.* for each—the whole expense to parties being about 20,000*l.* a year for enabling them to do that which they ought to have power to do without any Act of Parliament. He would transfer the power now exercised in these matters to the Court of Chancery, the principle having been recognised in the case of the Ecclesiastical Matters, Charities, and the Municipal Corporation Acts. He proposed by the present Bill, that any persons whose necessities should require a power to lease their property in agriculture, mining, building leases, &c., should at once apply to one of the Judges of the Court of Chancery, who should have power to determine that such lease should be granted. The Bill had one other object—viz. to give a *prima facie* right to tenants for life to grant leases, unless the author of the settlement expressly forbid such a proceeding.

Lord *Lyndhurst* thought their lordships ought to be much indebted to his noble and learned friend for this Bill. Of his own knowledge, an application of a noble lord to Parliament for power to lease a portion of his property, had cost him 5,000*l.* In another case the expense was 6,000*l.* The present law was not only unjust to large owners of property, but it operated with still greater hardship on the owners of small estates. He could see no difficulty in giving the Court of Chancery the power to complete these transactions, the more especially as the principle of the bill had been recognised over and over again. He highly approved of the Bill, which, he believed, would be hailed with satisfaction throughout the country.

Lord *Bedesdale* supported the Bill, which he had no doubt would contain provisions for carrying out the intentions of those who made settlements.

Lord *Campbell* said, the Bill now laid on the table had his entire concurrence. He believed that settlements were not only good for individuals, but conduced to the good cultivation of the soil and the general prosperity of the country.

#### 4. TENANTS' COMPENSATION (IRELAND).

We would next advert to one of the Irish Real Property Bills, which it is important should not be passed unnoticed on this side the Channel. Lord *St. Leonards* thus addressed the House on the subject of the *retrospective* clause in the Bill for granting compensation to tenants:—

For himself, he had always been opposed to the principle of such a clause, still when he found that the Government, of which he was a member, had adopted such a clause, circumscribed and defined within certain narrow limits, he considered he was not at liberty to oppose its passing. He hoped, however, it would be explained whether the Government had come to any definite conclusions with reference to the Bill now before the House of Commons; and if they had, he hoped they would abide by them. He thought it might have been reasonably expected, holding the views which they did, that the Government itself would have come forward with a measure, and endeavoured to have carried it through. Instead of that they had left the matter in the hands of a private individual—an hon. and learned gentleman—who was known to hold a very strong opinion in favour of a retrospective allowance for the improvements of tenants in Ireland. The consequence was that a measure had been introduced, which was now travelling up to their lordships, and which, in all likelihood, would lead to a difference of opinion between the two Houses. At the same time, he was bound to add, that should the measure come up, limited and circumscribed as it was before, he should not feel justified in opposing, although he could not regard it even then with favour. But in the shape in which the Bill obtained a second reading from the House of Commons, he would state at once that it was one which he never could approve of, nor could any one that had retained the slightest regard for the rights of property. He would pledge himself to show that there was not the slightest foundation for the assumption that any rule of equity had ever been propounded, or that there was any case in equity producible, sanctioning the clause in the Bill granting compensation for retrospective improvements.

The Lord Chancellor quite concurred with his noble and learned friend in considering the Tenants' Compensation Bill to be a most important measure, and assured his noble and learned friend, that neither he nor any of his colleagues in the Government had any peculiar sympathy as an abstract principle for



retrospective compensation. If it be supposed—as he believed it was erroneously supposed—it had been argued that that was a principle which was consistent with the ordinary rules of equity in this country, he could not assent to such a proposition, nor did he believe that it was argued with any such intent. He had not had as yet an opportunity of communicating with his hon. and learned friend the Solicitor-General on the subject; but he had no doubt that all his hon. and learned friend meant to say was, that analogous cases of retrospective compensation might be deduced from opinions pronounced by Sir William Grant and Lord Eldon in certain cases. There were cases of analogy, but incidentally alluded to by his hon. and learned friend in the course of the debate which took place on the subject in the other House of Parliament. He (the Lord Chancellor) thought that the case of the Irish tenant was an exceptional case, which it was important, with a view to the peace of society, to deal with in an exceptional manner. An hon. and learned gentleman introduced a Bill that Session into the other House framed upon that principle, but going somewhat further than her Majesty's Government were willing to go. A debate took place upon the subject, and the Bill was carried through its second reading by a large majority. The Government had since taken charge of the Bill upon certain conditions—provided that the hon. and learned gentleman who introduced the measure would be satisfied to limit the principle of retrospective compensation even below what it was in the measure introduced a few years ago by the Attorney-General for Ireland in the administration of his noble friend (Lord Derby), confining the retrospective compensation to *houses built by the tenant, to roads made, and to exterior fences made; and limiting such claims to a certain defined period of time, and also confining them to cases where the landlord turned the tenant out of possession.* That was the principle to which the Government were willing to assent. No doubt it was always a difficult doctrine to support even to that extent; but still as a matter of compromise the Government were willing to accede to it.

##### 5. IRISH COURT OF CHANCERY AND ENCUMBERED ESTATES' BILLS.

Lord St. Leonards next adverted to the subject of the Irish Court of Chancery, which had been taken up by an hon. and learned friend of his, whose talents were very great, and for whom he entertained a great respect.

“He most earnestly hoped that any measure to be introduced by her Majesty's Government, altering the constitution of the Irish Court of Chancery, would not be based upon a supposed analogy of the Irish and English Courts. It was proposed to create in Ireland three Vice-Chancellors by the abolition of the Masters. Now there could be no doubt that the

creation of three Vice-Chancellors was not called for by the state of business in Ireland. In England they were of necessity appointed, but not in lieu of the Masters, in whose place, and for the fulfilment of whose duties, it had only been deemed requisite to appoint a number of chief clerks. He had had some experience of equity business in Ireland—and there was no reason for believing that since then it was on the increase—but when he was there he would venture to say that the judicial power was fully adequate to discharge all the business that came before it. The Chancellor and the Master of the Rolls were quite competent to transact the whole judicial business of Ireland. He trusted, therefore, that any measure which the Government might have in contemplation would not be encumbered by the appointment of Judges who were not required.

“With reference to the Irish Encumbered Estates' Court, he thought that nothing could be more unwise than to maintain a tribunal of that character exceptionally for Ireland. He thought that the rule for Ireland ought to be that common to England; but whether such a Court should be established for either country at all, involved, in his opinion, considerations relative to property the most momentous ever raised before Parliament.”

The Lord Chancellor said, in reference to the Bills relating to a reform of the Court of Chancery in Ireland, introduced into the other House by the hon. and learned gentleman who filled the office of Solicitor-General in the administration of Earl Derby, the Government, though not expressing their disapproval of those measures, felt that they could not assent to them in consequence of their having issued a commission to inquire into the state of the Court of Chancery and into that of the Encumbered Estates' Court; and pending such inquiry they did not deem themselves justified in legislating upon the subject. He had every reason to expect the report of the commissioners to be laid before them in sufficient time to enable the Government to introduce a Bill founded upon it in the course of the present Session. The Bill relating to Encumbered Estates would only extend to Ireland; but if it be found to work well, the principle would probably be applied to England.

Lord Campbell said, he had the fullest confidence in the measures of his noble and learned friend on the woolsack. He doubted, however, whether the Government had adopted the best method of carrying out their measures of legal reform. When the question of law reform was to be brought forward he thought that all those who were expected to take part in it should be previously consulted as to the intentions of the Government on the subject.

## COUNTY COURTS.

THE COMMISSIONERS' RECOMMENDATION  
AS TO PRACTITIONERS' COSTS.

HAVING given the substance of the Commissioners' recommendations regarding the alterations proposed in the *jurisdiction* of the County Courts, we proceed to state their views on the subject of the *costs* of professional assistance in conducting the business of the Courts.

The report states that proceedings in the County Court are, as a general rule, conducted by the parties in person. It is competent, however, for any party as a matter of right to appear by counsel and attorney, or by counsel only, or attorney only, such attorney not acting for another attorney in the conduct of the suit in Court. It is, however, a matter of discretion with the Judge whether the costs incurred in obtaining professional assistance shall be allowed as costs in the cause. It is competent for the Judge, if he sees fit upon the hearing, to permit any person other than the advocates already mentioned to appear for parties in the cause.

With respect to employing an attorney or counsel antecedent or subsequent to the hearing, the costs of that employment cannot, even at the discretion of the Judge, be allowed as costs in the cause. To employ a barrister or an attorney in the conduct of a cause in the County Court is consequently exceptional. The costs abide the event, unless the Judge otherwise orders.

No scale of costs as between attorney and client, except in the particular instances after-mentioned, exists in the County Courts. Any claim, with those exceptions, which an attorney has against his client for services rendered, must be taxed on the scale of some other Court.

As between party and party, costs of counsel or attorney previous to the hearing are not allowed in any case. Costs of counsel or attorney on the hearing can only be allowed by order of the Judge. Costs of witnesses and other expenses are also entirely in the discretion of the Judge, but in default of any special direction to the contrary, they abide the event of the action.

The costs allowed are divided into four classes: first, of counsel; second, of attorney; third, of witnesses; fourth, of other expenses.

In general, the amount of the claim determines the amount of the fee to *Counsel*; thus, when the claim does not exceed 5*l.*, a fee to counsel cannot be allowed

against the opposite party, though it seems it may against the client;—where the claim exceeds 5*l.* but does not exceed 20*l.*, a fee of 1*l.* 3*s.* 6*d.* only can be allowed;—where the claim exceeds 20*l.* but does not exceed 50*l.*, a fee of 2*l.* 4*s.* 6*d.* only can be allowed; where it exceeds 50*l.*, and in other cases under the consent clause, no scale exists.

Fees to the *Attorney* vary with the amount of the claim sought to be recovered. Where the claim does not exceed 40*s.*, the attorney cannot recover costs from any one;—where it exceeds 40*s.* but does not exceed 5*l.*, he can only recover from his own client 10*s.*, and nothing from the opposite party;—when it does exceed 5*l.* but does not exceed 20*l.*, his costs may be allowed to the amount of 15*s.*;—where the demand in any plaint in covenant, debt, detinue, or assumpsit exceeds 20*l.* but does not exceed 35*l.*, he may be allowed 1*l.* 10*s.*, and where the demand exceeds 35*l.* but does not exceed 50*l.*, he may be allowed 2*l.*

A person other than an attorney, who is allowed by the Judge to appear for either party, is not allowed to recover any remuneration for his services.

In demands exceeding 50*l.*, or other cases within the jurisdiction by consent, no scale of professional fees has been established.

The allowance for the attendance of witnesses is fixed by a schedule attached to the rules of Court, and which is subject to the discretion of the Judge, but the amounts there allowed are in no case, to be exceeded.

The following is the scale contained in the schedule:—

	Per Day.
Gentlemen, merchants, bankers, and professional men . . . . .	7 6
Tradesmen, auctioneers, accountants, clerks, and yeomen . . . . .	5 0
Journeymen, labourers, and the like	2 0
Travelling expenses per mile one way	0 6

Fees of Court paid by the successful party, in order to support his claim or defence, become costs in the cause.

Previously to the passing of the 15 & 16 Vict. c. 54, s. 1, much discussion had taken place in both Houses of Parliament on the subject of costs to be allowed to legal practitioners in the County Courts. It was ultimately provided by that Statute, that the Chancellor should be empowered to appoint five County Court Judges to prepare scales of costs, both between party and party, and between attorney and client. Those scales were to be submitted to three

Judges of the Superior Courts, of which a chief was to be one, and when sanctioned by them, they were to regulate the costs to be taken in the County Courts. Five County Court Judges were accordingly appointed, and they, after several communications and conferences on the subject, with several of the Law Societies and individual legal practitioners, prepared scales of costs in conformity with what appeared to them to be the intentions of the Legislature. When submitted to the learned Judges to whom these scales were referred, their lordships doubted whether the language of the Statute was sufficiently explicit to enable them to dispose of the subject in a satisfactory manner. No amending Act was passed, and nothing further was done by the learned Judges with reference to the scales. The law, therefore, on this subject, remains as above stated.

It appears, therefore, that in the County Courts, according to the present law, no costs are recoverable as costs in the cause between party and party, except those which are specifically appointed in Statutes upon the subject; and that as between attorney and client, no provision, with one exception, is made with respect to costs.

The Commissioners then proceed to consider the question; first, with reference to costs as between party and party; and, secondly, with reference to costs as between attorney and client.

I. With reference to costs between *party and party*. That question may be treated, first, with respect to suits for sums not exceeding 20*l.*; secondly, for sums exceeding 20*l.* and not exceeding 50*l.*; thirdly, claims under the consent clause 13 & 14 Vict. c. 61, s. 17.

*First*, with respect to suits for sums not exceeding 20*l.*

One of the objects which the Legislature had in view (as the Commissioners state) in establishing the County Courts, was to secure for the poorer suitors a cheap tribunal, in which they might state their own case before the Judge, and obtain from him a prompt decision *without the intervention of legal advisers*. As a rule, in cases where the amount claimed is within the exclusive jurisdiction of the Court, no professional assistance is required. The exceptions to this rule are few. To introduce the practice of allowing professional costs in all cases would be to alter a general rule for the sake of an exception. This appears to the Commissioners impolitic. For a cer-

tain class of exceptional cases, the Legislature has already provided in the section cited, by awarding a certain limited amount of costs to counsel and attorney, at the discretion of the Judge.

They think that it would be inexpedient to increase the number of exceptions or allow a greater amount of professional costs than the Legislature already permits, or free the suitors, from the exercise of the Judge's discretion, as to granting costs, in those exceptional cases. They admit it may be, that the fees awarded by the Statute are too small adequately to compensate legal practitioners in cases of real difficulty; but experience shows that the number of the cases belonging to this class, decided in the County Courts, is extremely small, and they do not think it wise to endanger an important principle of the tribunal for the sake of a few exceptional cases.

*Secondly*, where the claim exceeds 20*l.* but does not exceed 50*l.*

In these cases the County Court ceases to be exclusively a "Small Debts Court." It is then a Court of jurisdiction concurrent with the Superior Courts.

The proceedings in the County Court being simple, local, and rapid, of course cannot require the establishment of a scale of costs to the same amount as that existing in the Superior Courts. But such a scale should be allowed as would, where professional assistance is requisite, reasonably compensate the legal practitioner.

They therefore think, that an amount of costs higher than that which is now sanctioned by law, but limited to such an amount as would secure a reasonable compensation to the practitioner for his services in the County Court, should be allowed at the discretion of the Judge.

*Thirdly*, with respect to claims within the consent jurisdiction under the 13 & 14 Vict. c. 61, s. 17.

In these claims they think the same principle as in cases within the concurrent jurisdiction ought to apply.

II. With regard to costs as between *attorney and client*.

*First*, as to cases where the claim does not exceed 20*l.*

According to the construction which has been put upon section 91 of the 9 & 10 Vict. c. 95, it appears that an attorney who has conducted a proceeding in a County Court may recover from his client his costs for professional exertions out of Court on

the same scale as in the Superior Court, the fees mentioned in the above section being intended as a compensation for the mere act of appearing in Court.

The Commissioners are of opinion that where the claim does not exceed 20*l.*, it would be desirable, in conformity with the principle of treating these Courts in such cases as the fitting tribunal for the recovery of small demands, without professional assistance, that no greater sum should be recoverable by the attorney from his client than the fees mentioned in the section, unless the client signs a memorandum to be attested by a witness other than the attorney, undertaking to pay costs on some scale, or for some amount, different from that provided by the Statute.

*Secondly*, with respect to costs of this description, where the claim exceeds 20*l.*, but does not exceed 50*l.* :

There they think, on the principle already referred to, that an amount of costs, such as would reasonably compensate the practitioner, should be allowed.

*Thirdly*, with respect to claims within the consent clause.

In those claims, the Commissioners make the like recommendations as in the last class of cases.

## ALTERATION IN PLEADINGS BILL.

THIS Bill, introduced by the Attorney-General, proposes to continue the 13 & 14 Vict. c. 16, enabling the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading.

Powers were given by that Act to the Judges of the Superior Courts of Common Law at Westminster, within *five years* from the passing of the Act, to make such alterations in the mode of pleading in the said Courts, and in the mode of entering and transcribing pleadings, judgments, and other proceedings in actions at law, and in the time and manner of objecting to errors in pleadings and other proceedings, and in the mode of verifying pleas and obtaining final judgment, without trial in certain cases, and such regulations as to the payment of costs, and otherwise for carrying into effect the said alterations, as to them may seem expedient: the powers so by the Act conferred are about to expire, and it is desirable that the same should be further prolonged: it is therefore proposed to enact, that the powers conferred by the said recited Act on the Judges of the said Superior Courts of Common Law at Westminster shall be continued for a period of five years from the passing of this Act, subject always to the provisions and conditions in

the said recited Act contained as to any rules, orders, and regulations which may be made by the said Judges under and by virtue of the said powers.

## LEASES AND SALES OF SETTLED ESTATES BILL.

THIS Bill to facilitate leases and sales of settled estates, recites that it is expedient the Court of Chancery should have power to authorise leases and sales of settled estates in all cases where it shall deem that such leases or sales would be proper for the beneficial administration of the estate, and consistent with a due regard for the interests of all parties entitled under the settlement; and that tenants for life of land in possession should have power to grant agricultural leases thereof, at rack-rent, for a reasonable period, to be binding on their successors. It is therefore proposed to enact, amongst others, the following clauses:—

It shall be lawful for the Court of Chancery, subject to the provisions and restrictions in this Act contained, to authorise leases of any settled estates, or of any rights or privileges over or affecting any settled estates for any purpose whatsoever, whether involving waste or not, provided the following conditions be observed:

First, every such lease shall be made to take effect in possession, and shall be for a term of years not exceeding for an agricultural lease 14 years, for a mining lease, or a lease of water, wayleaves, waterleaves, or other rights or easements, 40 years, and for a building lease 99 years, except only in cases where the Court shall be satisfied that it is the usual custom of the district to grant building leases for longer terms:

Secondly, on every such lease shall be reserved the best rent, or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, without taking any fine or other benefit in the nature of a fine:

Thirdly, where the lease is of any earth, coal, stone, or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter-mentioned; namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate, or by virtue of any declaration in the settlement, is entitled to work such earth, coal, stone, or mineral for his own benefit, one-fourth part of such rent, and otherwise three-fourth parts thereof; and in every such lease sufficient provision shall be made to insure such application of the aforesaid portion of the rent, by the appointment of trustees, or otherwise, as the Court shall deem expedient:

Fourthly, no such lease shall authorise the felling of any trees except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations, or other works authorised by the lease:

Fifthly, every such lease shall be by deed, and the lessee shall execute a counterpart thereof; and every such lease shall contain a condition for re-entry on nonpayment of the rent within a period of not less than 28 days after it becomes due; s. 2.

When application is made to the Court, either to authorise a particular lease, or to vest any general powers of leasing in trustees, the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorised; s. 8.

Where the Court shall deem it expedient that any general powers of leasing any settled estates should be vested in trustees, it may by order vest any such power accordingly, either in the existing trustees of the settlement or any other persons; and such powers, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise as the Court shall direct; and in every such case the Court, if it shall think fit, may impose any conditions as to consents or otherwise on the exercise of such power, and the Court may also authorise the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid; s. 10.

It shall be lawful for the Court of Chancery, subject to the provisions and restrictions in this Act contained, from time to time to authorise a sale of the whole or any parts of any settled estates, or of any timber (not being ornamental timber) growing on any settled estates, and every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court; s. 11.

When any land is sold for building purposes it shall be lawful for the Court, if it shall see fit, to allow the whole or any part of the consideration to be a fee-farm rent issuing out of such land, which may be secured and settled in such manner as the Court shall approve; s. 12.

On any sale of land any earth, coal, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants, or submit to any restrictions which the Court may deem advisable; s. 13.

It shall be lawful for the Court of Chancery, subject to the provisions and restrictions in this Act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, or paths, drains or water-courses, either to be dedicated to the public or not; and the Court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to and vested

in any other trustees, upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the Court shall be deemed advisable; s. 14.

Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for life or any greater estate may apply to the Court of Chancery, by petition in a summary way, to exercise the powers conferred by this Act; s. 16.

Subject to the exception contained in the next section, every application to the Court must be made with the concurrence or consent of the following parties; namely,

Where there is no tenant in tail under the settlement in existence, then the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn children; And where there is a tenant in tail under the settlement in existence, then the parties to concur or consent shall be such tenant in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn children prior to the estate of such tenant in tail; s. 17.

Provided nevertheless, that it shall be lawful for the Court, if it shall think fit, to give effect to any petition, subject to and so as not to affect the rights, estate, or interest of any person (not being a tenant in tail) whose consent or concurrence has been refused or cannot be obtained, or whose rights, estate, or interest ought in the opinion of the Court to be excepted; s. 13.

The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on the settlement or on any copies thereof, or otherwise recorded in any way it may think proper, in all cases where it shall appear to the Court to be practicable and expedient, for preventing fraud or mistake; s. 21.

Nothing in this Act shall be construed to empower the Court of Chancery to authorise any lease, sale, or other act beyond the extent to which in the opinion of the Court the same might have been authorised in and by the settlement by the settlor or settlors; s. 24.

It shall be lawful for the Court, if it shall think fit, to order that all or any costs or expenses of all or any parties of and incident to any application under this Act shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement; and the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such

costs and expenses to be taxed as the Court shall direct; s. 26.

The Lord Chancellor, with the advice and assistance of the Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the Vice-Chancellors, or of any three of them, may, if he shall think fit, from time to time make general rules and orders for carrying the purposes of this Act into effect, and for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the matters to which this Act relates, and for regulating the fees and allowances to all officers and *solicitors* of the Court in respect to such matters, and for altering the course of proceeding herein prescribed in respect to the matters to which this Act relates, or any of them; and such rules and orders may from time to time be rescinded or altered by the like authority; and all such rules and orders shall take effect as general orders of the Court; s. 27.

It shall be lawful for any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for life or for any greater estate, either in his own right or in right of his wife, and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy, or in dower, or in right of a wife who is seized in fee, to demise the same or any part thereof from time to time for any term not exceeding 14 years in possession, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise; provided that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a condition of re-entry on nonpayment within a time not less than 28 days of the rent thereby reserved, and on non-observance of the covenants or conditions therein contained, and provided a counterpart of every deed of lease be made and executed by the lessee; s. 29.

All powers given by this Act, and all applications to the Court under this Act, and consents to such applications, may be exercised, made, or given by guardians on behalf of infants, and by Committees on behalf of lunatics, and by assignees of bankrupts or insolvents: Provided, nevertheless, that in the cases of infant or lunatic tenants in tail no application to the Court or consent to any application may be made or given by any guardian or Committee without the special direction of the Court; s. 32.

Where a married woman shall apply to the Court, or consent to an application to the Court, under this Act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she

freely desires to make or consent to such application; and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independently of her husband, or not; and no such application or consent shall be deemed a breach of any restraint on anticipation; s. 33.

The examination of such married woman shall be made either by the Court or by some *solicitor* duly appointed to administer Oaths in Chancery, who shall certify, under his hand, that he has examined her apart from her husband, and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same; s. 34.

Subject to such examination as aforesaid, married women may make or consent to any applications, whether they be of full age or infants; s. 35.

Nothing in this Act shall be construed to create any obligation at law or in equity on any person to make or consent to any application to the Court, or to exercise any power; s. 36.

For the purposes of this Act a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates, although his estate may be charged or incumbered either by himself or by the settlor, or otherwise howsoever, to any extent; and any lease or sale authorized by this Act may be made either subject to any such charge or incumbrance, or freed therefrom with the concurrence of the party entitled thereto; s. 37.

Provided that nothing in this Act shall authorise any sale or lease beyond the term of 14 years of any settled estates in which, under the Act of the 34 & 35 Henry 8, c. 20, "to embar feigned recovery of lands wherein the King is in reversion," or under any other Act of Parliament, the tenants in tail are restrained from barring or defeating their estates tail; but the timber on any such last-mentioned estates may be sold under this Act; s. 38.

Nothing in this Act shall authorise the granting of a lease of any copyhold or customary hereditaments not warranted by the custom of the manor without the consent of the lord, nor otherwise prejudice or affect the rights of any lord of a manor; s. 39.

The provisions of this Act shall extend to all settlements, whether made before or after it shall come in force, except those as to demises to be made without application to the Court, which shall extend only to settlements made after this Act shall come in force; s. 40.

## ADMINISTRATION OF OATHS ABROAD.

THE Foreign Minister has introduced a Bill to enable British Diplomatic and Consular Agents Abroad to administer Oaths and do Notarial Acts. By the 6 Geo. 4, c. 87, powers

are given to British consuls general and consuls to administer oaths and do notarial acts in the foreign places to which they are appointed, and it is expedient that the like powers should be given to ambassadors and other diplomatic agents and to vice-consuls and consular agents abroad. It is therefore proposed to enact, that it shall be lawful for every British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or of legation exercising his functions in any foreign country, and for every British vice-consul, acting consul, pro-consul, or consular agent (as well as every consul general or consul) exercising his functions in any foreign place, whenever he shall be thereto required, and whenever he shall see necessary, to administer in such foreign country or place any oath or to take any affidavit or affirmation from any person whomsoever, and also to do and perform in such foreign country or place all and every notarial acts or act which any notary public could or might be required and is by law empowered to do within the United Kingdom of Great Britain and Ireland; and every such oath, affidavit, or affirmation, and every such notarial act, administered, sworn, affirmed, had, or done by or before such ambassador, envoy, minister, chargé d'affaires, secretary of embassy or of legation, vice-consul, acting consul, pro-consul, or consular agent, shall be as good, valid, and effectual, and shall be of like force and effect, to all intents and purposes, as if such oath, affidavit, or affirmation, or notarial act, respectively, had been administered, sworn, affirmed, had, or done before any justice of the peace or notary public in any part of the United Kingdom of Great Britain or Ireland, or before any other legal or competent authority of the like nature.

2. Affidavits and affirmations so taken as aforesaid under the said Act of King George the Fourth or this Act shall and may be received, read, and made use of in and before any Court of Law or Equity or other judicature whatever in any part of the United Kingdom, and the Judges and officers thereof, in or in relation to any action, suit, cause, matter, or proceeding in or before any such Court or judicature in like manner and shall be of the same force and effect as affidavits and affirmations taken in or before such Court or judicature, or by any person duly commissioned or authorised by such Court or judicature to take such affidavits or affirmations, and shall be filed and dealt with accordingly.

3. Documents to be admitted in evidence without proof of the seal or signature of the ambassador or other official person.

4. Persons swearing or affirming falsely guilty of perjury.

5. Persons forging seal or signature guilty of felony.

## NOTICES OF NEW BOOKS.

*The Law of Landlord and Tenant; being a Course of Lectures delivered at the Law Institution.* By John William Smith, Esq., late of the Inner Temple, Barrister-at-Law. With Notes and Additions by Frederic Philip Maude, Esq., of the Inner Temple, Barrister-at-Law. London: W. Maxwell, 1855, pp. 358.

ANY work from the pen of the late Mr. John William Smith will be welcomed by the Profession in all its branches. The subject now selected, that of the Law of Landlord and Tenant, is one of very general interest to almost every practitioner, and Mr. Smith has executed his task with great learning, accuracy, discrimination, and conciseness. The volume comprises a course of lectures delivered by Mr. Smith, at the Law Institution, in the years 1841 and 1842.

They are printed in the state they were left by the learned author; and the authorities he cited are given in the text. It appears that the editor, Mr. Maude, is responsible both for the foot notes and those portions of the text included within brackets. He has also added the headings to the lectures and marginal notes.

The new matter inserted in the notes comprise the alterations in the law since the lectures were delivered, and the practical application, in the later decisions, of the principles mentioned in the text. The editor has also endeavoured, by the addition of many of the earlier cases, to make the work more useful, not only for students, but as a circuit companion.

It was thought that the insertion of these additions in the text would break up, inconveniently, the broad general statements of the law of which it mainly consists; and it was also felt to be desirable that this new matter should be distinctly separated from the original work.

Mr. Smith commenced this valuable series of Lectures with the following remarks:—

"There are few words so constantly in lawyers' mouths as the words, *Landlord and Tenant*; and yet, when we come to inquire what precise relation are they intended to express—there are few questions which one feels greater practical difficulty in answering; for, on the one hand, there is no doubt whatever that, in point of strict law, wherever we find a subject in possession of land, there the relation of tenancy is in existence between him and somebody or other, since, according to the immutable rule of English law, no subject can

have what is called *allodial* property, that is, land held of nobody. Some one or other must be his superior lord, and, if no other person, then the Sovereign, of whom all the landed property in the realm in the possession of subjects is thus ultimately held.<sup>1</sup> I say *ultimately*, because, put the case that there are 50 intermediate landlords, the last of them must himself hold of some person, and that person must be the Sovereign, inasmuch as there is no one else capable of holding independently of any superior. There is great doubt among our legal antiquarians as to the precise period at which this system of tenures was adopted in England; some contending that it owes its origin entirely to the Norman Conquest, others, that it existed in the Saxon times, and received certain modifications after the Conquest.<sup>2</sup> But, be this as it may, it has now been for upwards of 800 years, at least, a settled and unchangeable principle of English law, that no person except the Sovereign can hold landed property without a superior lord, and, consequently, in the contemplation of strict law, the relation of *Landlord and Tenant* is as extensive as the ownership of landed property by subjects.<sup>3</sup>

"I need not, however, tell you who must be all familiar with the use of those terms, that when we speak of *Landlord and Tenant*, even among lawyers, we use those words in a much narrower sense than that which I have just described. For instance, when we use the words *Landlord and Tenant*, we do not mean to express the species of relation which subsists between the Sovereign and a subject; for instance, the Duke of Wellington, who holds his estates of her Majesty by the service of presenting yearly a *banner* in lieu of all other rents and services;<sup>4</sup> nor do we, I think, ever intend to express the sort of relation that exists between the reversioner and the particular tenants under a settlement, where no rent is reserved, or any service rendered, although a tenancy doubtless exists between them; for instance, if I convey lands to A. in tail, keeping the reversion myself, there is no doubt that A. becomes my tenant, though I reserve

net a sixpence of rent, nor ask for any covenant on his part to perform any of the ordinary duties of a tenant, and though he might destroy my interest the next day if so minded. But though, as I have said, he is my tenant in strict law, this is not the sort of tenancy we mean when we use the words *Landlord and Tenant*. It is very difficult to express in terms the precise idea which we attribute to those words; but I think that I am not far wrong in saying that, when we speak of *Landlord and Tenant*, we have the notion in our minds of a tenancy limited in point of duration within some bounds not so extensive as to render the landlord's interest *practically* worthless, and accompanied by some remunerating incidents to the reversion, such as a rent, or at all events a fine in lieu of one, and also by certain obligations, such as covenants, or, where the tenancy is evidenced by some instrument not under seal, agreements, for the performance of the duties usually required from persons taking the description of property demised; and as these are the sort of tenancies which give rise to the great mass of practical questions involved in the law of *Landlord and Tenant*, it is to these that I intend almost exclusively to direct my remarks."

Of tenancies less than freehold, namely, for years; at will; and by *sufferance*, the Lecturer observes, the history is curious—

"In the very early ages, while the feudal system retained its original vigour, estates of a less quality than freehold were unknown. There was then no such thing as an estate for years; the owner of the soil did indeed sometimes covenant with a particular person that he should enjoy the right of dwelling on and cultivating a portion of land for a certain definite period, but this did not constitute the person who occupied it a tenant at all. It was considered as a mere *agreement* between him and the freeholder, conferring no estate, and creating no tenure. If the freeholder turned him out on the following day, he had no remedy by which he could recover the possession. He might, indeed, maintain an action for the breach of the agreement to allow him to occupy, but he was unable to recover the land, since the law did not recognise him as possessing any estate in it."

"The first step towards establishing him on his present footing was the invention of a particular form of the *writ of covenant*,<sup>5</sup> in which he was made to demand his *term*, as well as damages for the injury done him in ousting him; but as this was only a form of the action of

<sup>1</sup> Co. Litt. 1 a, b, 65 a.

<sup>2</sup> See Co. Litt. (by Hargrave and Butler) 64 a, note (1); 2 Black. Com. 48; and Reeve's Hist. of Eng. Law, vol. i. p. 8, where the authorities on both sides of this question are mentioned.

<sup>3</sup> Co. Litt. 65 a.; 2 Black. Com. 51.

<sup>4</sup> This is one of the few remaining instances of a holding by *petite serjeanty* (per parvum servitium), which was one of the old tenures in *capite*. In this tenure a subject held land immediately from the Crown, rendering a bow, a sword, or the like. Litt. ss. 159, 160, 161. *Grand serjeanty* was of a similar character, but the services rendered were personal to the King; as, for instance, the bearing of his sword or his lance. Litt. ss. 153 to 158. By the 12 Car. 2, c. 24, these tenures were converted, in effect, into ordinary *socage* tenures.

<sup>5</sup> "See Bac. Ab. *Leases*.

<sup>6</sup> "As to the early history of the action of ejectment, see Bracton bk. 4, fol. 220, cap. 36; Hale's Hist. Common Law, c. 8 p. 201 (6th Edit.); Bac. Ab. *Leases*; Reeve's Hist. of English Law, vol. i., p. 341; vol. iii., pp. 29, 390; vol. iv., p. 165; Adams on Eject. c. 1; Stephen on Plead. 12, 13.



covenant, and as he could only maintain that action against the person who had covenanted with him (for it was not till long afterwards that covenants were held to bind the assignee of the lessor), if it so happened that his lessor had aliened the estate, or had created a particular estate of freehold in it, he had no means of wresting the possession from the alienee or grantee of such particular estate, and consequently was left altogether to his action for damages.

"Thus matters stood until the reign of Henry 3, at which period *Bracton*, from whom we derive our knowledge of the progress of the law relative to this matter, informs us that it was determined to provide a full remedy for the grantee in such cases; and, for this purpose, a writ was invented entitled a writ of *Quare ejecit infra terminum*. This lay against the person *actually in possession of the land*, and called upon him to show cause why he had ousted the termor within his term, which, if he could not do, the termor had judgment to recover it, and might still bring an action of covenant against the lessor."

"But this writ, being levelled at the mischief done to tenants by means of alienations by their own lessors, was not so framed as to embrace the case of a tenant for years ousted, not by his own lessor, or any person claiming under him, but by the tortuous act of a mere stranger. In such cases, the tenant had no remedy but to apply to his lessor to bring a real action to recover back the seisin of the freehold from the trespasser, and then, the lessor having obtained the seisin, the tenant's right to have his term again attached, and in this circuitous manner it became vested in him. But, in the reign of Edward 3, a remedy was created for him in these cases, also, by the invention of the writ of *Ejectione firmæ*, the very writ by which actions of ejectment are now commenced." This writ, the first instance of which occurs in the 44th year of King Edward 3, did not, however, originally enable the termor to recover the term, but only damages against the trespasser. To recover the term itself he was obliged to resort to a Court of Equity, which, about this time, as Chief Baron Gilbert informs us at p. 2, of his Treatise, began to interfere for his protection. At last the Court of Law, however, gave him a complete remedy, not by the invention of any new writ, but by altering the judgment upon the old writ of ejectment, and giving

judgment that he should recover his term as well as damages. This was a singular stretch of power on the part of the Courts, and one on which probably no Court would venture at the present day. And what is most singular about it is, that we do not know even the precise period at which it took place, though it is ascertained to have been some time between 1455 and 1458; since, in the former year there is a reputed assertion by one of the Judges, that damages only are recoverable in ejectment;<sup>9</sup> and in the latter year, a reported assertion at the Bar, that the term likewise is recoverable.<sup>1</sup> Thus were tenants for years at last placed on the same level as freeholders, with regard to the security of their estates, and the facility of their remedy when dispossessed. Indeed, with regard to the remedy, they had arrived at a better position than the freeholder, for we all know that the real actions which were formerly the remedies made use of by the freeholder, became almost entirely disused, and that of ejectment, which had been invented for the sole use of the owner of the chattel interest, substituted in their place."

The principal subjects of the Lectures may be thus briefly described:—

1. A General View of Tenures:—Freehold tenancies; Tenancy in fee simple; Tenancy in fee tail; Tenancy for life; Tenancies less than freehold; Tenancy for years; Tenancy at will; Tenancy from year to year; Tenancy by sufferance.

2. Points relating to creation of tenancy:—Who may be lessors; Who may be lessees; What may be leased.

3. The mode in which demises are effected; Requisites to all leases; Usual incidents; The premises; The recitals; The habendum.

4. The reddendum; The covenants.

5. Points relating to continuance of tenancy:—Rights of landlord; As to payment of rent; Remedies for enforcing payment of rent; By action; By distress; What the landlord may distrain; Where the landlord may distrain.

6. When the landlord may distrain; How the landlord may distrain; What the landlord must do with the distress; Remedies of tenant for a wrongful distress.

7. Rights of landlord as to repairs and cultivation; Where no express agreement; Repairs, &c.; Where there is an express agreement; Cultivation; Remedies of landlord for non-repair; Rights of tenant against landlord.

8. Points relating to determination of the tenancy; Ways in which tenancy may determine; By effluxion of time; By surrender;

<sup>1</sup> "See *Bracton*, bk. 4, fol. 220, cap. 36.

<sup>2</sup> "When this Lecture was written, and before the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), the action of ejectment was supposed to be commenced by the original writ which is mentioned above, although, in fact, no writ was sued out, but the proceedings were begun by the declaration. It is now commenced by a writ in the form given by that Act, which is issued like an ordinary writ of summons. See ss. 168, 169, and Sched. A., No. 13.

<sup>9</sup> "Per Chocke, J., Mich. Term, 35 Hen. 6, fol. 42.

<sup>1</sup> "See *Brooke*, Ab. Part 2, *Quare ejecit*, fol. 167. The first entry of a judgment of recovery of the term is of the date of 1499. See *Rast. Entr.* 253 a; and the authorities collected in the note to *Doe d. Poole v. Errington*, 1 A. & E. 756."

By forfeiture; By notice to quit; Rights of parties on determination of tenancy.

9. Emblements; Fixtures.

10. Points relating to a change of parties to the demise; Assignment; By act of parties; By act of law.

## LAW OF ATTORNEYS AND SOLICITORS.

### PERSONAL LIABILITY FOR BUSINESS DONE FOR CLIENT.

THE attorney for the plaintiff in an action deposited a writ of *ca. sa.* with the agent in London of the sheriff of Gloucester, but without giving any special instructions as to its execution. The officer of the sheriff, having executed the writ, sued the attorney for the sum of 11. 16s. for mileage and expenses, and on the trial before the under-sheriff of Gloucester he obtained a verdict.

On a rule *nisi* being obtained for a new trial, *Martin, B.*, said—"It is not unreasonable to hold the attorney liable, because he knows more about the matter than his client; and if he wishes to restrict his liability, he should allow the client himself to employ the bailiff." The rule was accordingly discharged. *Brewer v. Jones*, 10 Exch. 655.

The previous decisions bearing on this subject are the following:—

1. *To sheriff's officer or bailiff.*—A sheriff's officer employed by an attorney to make arrests on *mesne* process, issued at the suit of his clients, may sue the attorney for the fees usually allowed for such arrests. *Townshend v. Carpenter*, *Ryan & M.* 314; 2 C. & P. 118 (Dec. 7, 1825).

2. A bailiff employed by an attorney to execute writs, may maintain an action against him for the fees usually paid on such occasions. *Foster v. Blakelock*, 5 B & C. 328; 8 D. & R. 48 (April 14, 1826).

3. A sheriff's officer may maintain an action against the attorney of the plaintiff in the original suit, for caption fees and conduct money, on proof of an employment by the attorney, and that it is the usual course of business for the attorney to be charged with and to pay such fees. *Newton v. Chambers*, 1 Dowl. & L. 869 (Hil. Term, 1844).

4. The attorney who engages the service of the bailiff, and not the client, is the party liable to the bailiff for the fees usually allowed on taxation for the execution of the process. *Wallbank v. Quarterman*, 3 C. B. 94 (May 25, 1846).

5. *Quere*, whether a sheriff's officer can maintain an action for levy and caption fees against the attorney of the plaintiff, unless specially employed by him; and *semble*, whether it must not be brought by the sheriff as the party

entitled to the fees? *Seal v. Hudson*, 4 Dowl. & L. 760 (Easter Term, 1847).

6. Where a bailiff is employed by an attorney to issue execution against a defendant, the attorney, and not the client, is liable to the bailiff for his fees. *Maile v. Mann*, 2 Exch. R. 608 (July 13, 1848).

*To sheriff.*—The sheriff cannot recover his charges for executing a *fi. fa.* by action against the attorney in the cause, unless there be special circumstances from which a jury may infer an actual undertaking by the attorney to pay. *Maybery v. Mansfield*, 9 Q. B. 754; 16 Law J., N. S., Q. B., 102 (Nov. 21, 1846).

*To witness.*—The attorney in a cause is not personally liable to a witness whom he sub-pœnas, without any express contract, to give evidence in a cause, for his expenses of attendance. *Robins v. Bridge*, 3 M. & W. 114; 6 Dowl. 140 (Mich. T. 1837).

1. *On undertaking.*—Where the solicitors of the assignees of a bankrupt tenant undertook, "as solicitors to the assignees," to pay the landlord his rent, *held* that they were personally liable. *Burrell v. Jones*, 3 B. & Ald. 47 (Nov. 6, 1819).

2. An attorney who personally undertakes in an action for the performance of the stipulations of an agreement, is liable on their non-performance. He cannot be considered a surety, for his client was not bound by that arrangement. *Iveson v. Conington*, 1 B. & C. 160 (Jan. 28, 1823).

*For business done at request of mortgagee's attorney.*—Certain business was transacted by the attorney to a commission of bankrupt at the request of the attorney of the mortgagee of premises belonging to the bankrupt, in reference to a sale thereof. The jury found, on the question being left to them, that credit was given to the mortgagee's attorney, *held* that he was liable, although at the time the business was done it was known to be for the benefit of the mortgagee. *Seruce v. Whittington*, 2 B. & C. 11; 3 D. & R. 195 (June 3, 1823).

1. *To messenger in bankruptcy.*—The solicitor, and not the petitioning creditor, is the party liable to the messenger under a commission of bankruptcy, which had been superseded. *Esparto Hartop*, 12 Ves. 349 (April 19, 22, 1806).

2. The solicitor under a commission of bankruptcy is not liable in the first instance to the messenger, whom he nominates, for his bill of fees, he is merely the medium through which it is convenient to the messenger to receive his bill of fees. *Hartop v. Jukes*, 2 M. & Sel. 438; 2 Rose, B. C. 263 (April 30, 1814).

3. The petitioning creditor, and not the solicitor, is liable to the messenger under a commission of bankrupt, for the costs and expenses attending it. The solicitor is an agent merely, and is not to be regarded as a principal as respects the messenger. *Hart v. White*, Holt, N. P. 376 (Mich. T. 1816).

## TESTAMENTARY JURISDICTION BILL.

PETITION TO THE HOUSE OF COMMONS  
FROM THE LORD MAYOR, ALDERMEN, AND  
CITIZENS OF THE CITY OF YORK AGAINST  
THE BILL.

SHewETH,

That a Bill has been introduced into your Honourable House to abolish the jurisdiction of all Ecclesiastical and Peculiar Courts in England and Wales respecting wills and administrations, to establish a distinct Court of Probate and administration, and otherwise to amend the law in relation to matters testamentary.

That by the said Bill it is proposed to transfer all the powers and jurisdiction now exercised by the said Courts, in relation to the probate of wills, the grant of administration, and the establishment of testamentary instruments to a Court, to be called the "Testamentary Court," having equal jurisdiction with the Court of Chancery with respect to matters within its jurisdiction, and the practice and proceedings whereof are to be similar to the practice and proceedings of the Court of Chancery.

That whilst your petitioners approve of the introduction into Parliament of some measure for improving the jurisdiction and practice of the Ecclesiastical Courts, they cannot view without alarm the proposal to transfer the whole testamentary business of the country to the Court of Chancery, of which Court, the proposed new Testamentary Court will, if established, substantially and virtually become a part.

That in the opinion of your petitioners, no ground whatever exists for such transfer in regard merely to the grant of probates and administrations, which your petitioners have reason to believe amount in England and Wales to upwards of 25,000 per annum, of which vast number about 98 per cent. are altogether uncontested, and free from litigation, and the proceedings to obtain which ought to be as speedy, as inexpensive, and as simple as possible, and so far as may be, transacted in the neighbourhood of the parties interested in the same.

That your petitioners are convinced that the proposed system will add most materially to the cost of obtaining such grants, whilst the immense amount of business to be transacted by the Testamentary Court, will render unavoidable great delays, and occasion vast public inconvenience.

That your petitioners regard the proposed enactment relative to the printing of copies of each will for sale, and the publication of the contents thereof in the *London Gazette*, as an unnecessary interference with the affairs of pri-

vate life, and they are of opinion, that the transmission of almost every will, and of the probate thereof through the post office, which will become necessary under the proposed system, will be attended with great risk, and occasion serious anxiety and inconvenience.

That in the event of fire, or public disturbance, the whole of the wills forming part of the title to the bulk of the property of the kingdom, will, if removed to London, be liable to be involved in one common destruction, which, when deposited in different registries, could never be the case.

That if the small peculiar jurisdictions throughout the kingdom were abolished, and the other jurisdictions consolidated, so as to leave in each district one Court for the proof of wills, and grant of administrations, and if one probate or administration only be made sufficient in all cases, the true interests of the public would be thereby consulted.

That your petitioners are able to state that the documents kept in the registry at York have been, and now are preserved with great care, and the public have always had ready access to them at little cost, and it is submitted that original wills, forming part of the title to a large proportion of the property of the country, ought to remain in local registries, for the more easy inspection of those interested under them, who are nearly in all cases resident in the neighbourhood, and to whom it is frequently of great importance that they should have the opportunity of readily seeing the documents.

Numerous practical inconveniences of a harassing and expensive character, which the operation of the Bill would necessarily inflict on the community at large, might easily be pointed out, but your petitioners refrain from entering further into detail. They anxiously hope that the pernicious and erroneous principle on which some of the main provisions of the Bill are founded, will not be recognised by Parliament.

Your petitioners therefore humbly pray that your Honourable House will not sanction the principle on which the said Bill is based, but that provisions may be made for the proof of wills, and grant of administrations, and the trial of all questions arising out of the same, in the several localities wherein the same may arise, and that for the accomplishment of these purposes your House will introduce such alterations or improvements in the existing laws, practice, or regulations of local Courts as to your Honourable House shall seem meet.

And your petitioners will ever pray, &c.

Given under the Common Seal of the said City of York, the 3rd day of May, 1855.

## SELECTIONS FROM CORRESPONDENCE.

## REMUNERATION TO SOLICITORS.

Unquestionably the remuneration to the Profession needs much consideration and a liberal one. I am not aware why the Scotch system, being a compensation according to the value of the subject, might not to a certain extent be adopted, provided too much was not given, which might be the case in matters of very large amount. There will, however, be no difficulty in fixing a limit so as to make the remuneration a moderate one.

It is clear the Profession is not remunerated as well as auctioneers. In one case of a sale of an estate within 25 miles of London, the auctioneer charged some 700*l.*, while the solicitor's profits were not a tithe of that sum, with perhaps ten times the trouble. On another occasion I remember, some years ago, trying a case on behalf of the defendant, at the Surrey Assizes, and although the defendant had a verdict, the taxed costs did not cover the actual disbursements in the cause. Surely, there is something "rotten in the state of Denmark" here.

A SOLICITOR OF NEARLY 50 YEARS' STANDING.

7th May, 1855.

## ADMINISTRATION OF OATHS IN CHANCERY.

I QUITE CONCUR in your observations, in the

last number of the *Legal Observer*, as to the clause introduced into the Bill for the "Despatch of Business in Chancery," and think with you, that the proposed enactment will impede business in many instances. It has been a great boon to the public and the Profession, the empowering London Commissioners to administer oaths, saving time and trouble. It must be the merest *red tapeism* to desire an alteration, and the clause must owe its suggestion to such a course.

I was about to write to you to enlarge upon the usefulness of the power given to London Commissioners, and to suggest that the Judges of the Common Law Courts should grant similar Commissions for taking affidavits in their Courts. This would also afford great convenience to the public and the Profession, although a few shillings may be lost to the official purse.

## NOTES OF THE WEEK.

## BILLS OF EXCHANGE BILLS.

THESE Bills have been reported by the Select Committee — Mr. Keating's Bill with Amendments, and we infer the Committee are in favour of that Bill.

## BANKERS' CHEQUES BILL.

This Bill for burthening the cheques on London Bankers with a penny stamp, has been withdrawn by the Chancellor of the Exchequer.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

*Lash v. Miller.* May 1, 1855.

## EQUITY JURISDICTION IMPROVEMENT ACT. — BANKRUPTCY BEFORE ANSWER. — ASSIGNEES.

*A bill was filed against two persons, who both appeared, and one answered, but the other became bankrupt before answer. An order was made under the 15 & 16 Vict. c. 86, s. 52, that the proceedings should be in the same plight as against the assignees, with liberty to them to answer.*

In this case the bill was filed against Miller and Gray. Both appeared, and both were required to answer. Gray answered and Miller

became bankrupt before answer. An application was made on 25th April last to Vice-Chancellor Wood for an order under the 15 & 16 Vict. c. 86, s. 52,<sup>1</sup> that the proceedings

obtain the usual order to revive such suit, on the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive or of the usual supplemental decree may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability; and an order so obtained, when served upon the party or parties who according to the present practice of the said Court would be defendant or defendants to the bill of revivor or supplemental bill, shall from the time of such service be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the said Court; and such party or parties shall

<sup>1</sup> Which enacts, that "Upon any suit in the said Court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to

might, as against the assignees, be in the same plight as they were, as against the defendant Miller, at the time of the bankruptcy. His Honour refused the application on the ground that it was not a case of pure revivor, and that as there had not been a decree a supplemental decree could not be made. A similar application was then made to the Lords Justices, who suggested that the matter should be mentioned to the Lord Chancellor.

*It is* now accordingly applied, and contended that the reason why revivor was allowed in case of death as against the personal representative or heir at law was, because the title of such representative or heir at law could not be disputed, at least in the Court of Chancery, and that under the Bankruptcy Consolidation Act, sect. 296, the appointment of assignees certified by the seal of the Court was indisputable evidence of such appointment, and that therefore an order analogous to the order to revive ought to be made in the present case.

The Lord Chancellor made an order that the cause and proceedings should be in the same plight and condition as against the assignees as they were in as against the bankrupt at the time of his bankruptcy, with liberty to the assignees to answer the bill.

#### Vice-Chancellor *Miss.*

*Mornington v. Keene.* May 2, 1855.

PAUPER PLAINTIFF.—COSTS OF ABANDONED MOTION.

Held, that a plaintiff suing in *forma pauperis* is entitled to *dives costs* on an abandoned motion.

THIS was an application on behalf of the plaintiff in this cause suing in *forma pauperis* for an order for *dives costs* of an abandoned motion.

thenceforth become a party or parties to the suit, and shall be bound to enter an appearance therein in the office of the Clerks of Records and Writs, within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or order of the Lord Chancellor, provided that it shall be open to the party or parties so served, within such time after service as shall be in that behalf prescribed by any general order of the Lord Chancellor, to apply to the Court by motion or petition to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill, stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon: Provided also, that if any party so served shall be under any disability other than coverture, such order shall be of no force or effect as against such party until a guardian or guardians *ad li.* shall have been duly appointed for such party, and such time shall have elapsed thereafter as shall be prescribed by any general order of the Lord Chancellor in that behalf."

*Freeing*, in support, referred to the Order of 10th December, 1849, which directs, that "in all cases in which costs are ordered to be paid to a party suing in *forma pauperis*, such costs shall, unless the Court shall otherwise order, be taxed as *dives costs*."

The Vice-Chancellor granted the application.

#### Court of Queen's Bench.

*Regina v. Seal.* May 4, 1855.

QUO WARRANTO.—ERROR FROM.—COMMON LAW PROCEDURE ACT.

Held, that a writ of error under the 15 & 16 Vict. c. 76, ss. 146-149, will not lie against a quo warranto.

THIS was a rule nisi that the memorandum of error in this quo warranto should be received at the Crown Office, under the 15 & 16 Vict. c. 76, s. 149, which enacts, that "either parties alleging error in law, may deliver to one of the Masters of the Court a memorandum in writing, in the form contained in the schedule (A.) to this Act annexed, marked No. 10, or to the like effect, entitled in the Court or cause, and signed by the party or his attorney, alleging that there is error in law in the record and proceedings; whereupon the Master shall file such memorandum, and deliver to the party lodging the same a note of the receipt thereof, and a copy of such note, together with a statement of the grounds of error intended to be argued, may be served on the opposite party or his attorney."

By s. 146, it is enacted, that "no judgment in any cause shall be reversed or avoided for any error or defect therein, unless error be commenced, or brought and prosecuted with effect, within six years after such judgment signed or entered of record."

*Norman* showed cause against the rule, which was supported by *Maynard*.

The Court said, that however desirable it might be that error should apply to proceedings by quo warranto, the Act only applied to cases as *between* party and party, and the rule would therefore be discharged.

#### Court of Insolvency.

(*Coram* Mr. Commissioner *Murphy*.)

*In re James Shaw.* May 2, 1855.

SECOND PETITION AFTER FINAL ORDER.

Held, that an insolvent who has petitioned under the Protection Act and received a final order, cannot present a second petition.

THE question in this case was, whether an insolvent, who had petitioned under the Protection Act and received a final order, could at any time file a second petition.

Mr. Commissioner *Murphy* said, that the Chief Commissioner and Mr. Commissioner *Phillips* were of opinion, that second petitions could not be entertained under the Protection Act; and although he did not concur in that opinion, he should yield to the majority and act in accordance with their views, until the point was decided by a Superior Court.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, MAY 26, 1855.

### BILLS OF EXCHANGE AND PROMISSORY NOTES BILL.

#### REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF COMMONS.

THE Report of the Select Committee on the Bills of Exchange Bills has just been published with the evidence, and accompanied with the amended Bill. The Select Committee were Sir Erskine Perry, Mr. Walpole, Mr. Kirk, Mr. Glyn, the Solicitor-General for Ireland, Mr. Keating, Mr. Lowe, Mr. Muntz, Mr. Horsfall, the Lord Advocate for Scotland, the Attorney-General, Mr. Gurney, Mr. Henley, Mr. Ather-ton, and Mr. Hankey.

It will be observed that several bankers and others were on the Committee, as well as lawyers. The Committee held six meetings and examined four witnesses, namely, Mr. Gilmour, formerly a Scotch solicitor, now at the English Bar; the Lord Advocate of Scotland; Mr. Park Nelson, the Solicitor of the Notaries of London; and Mr. Walton, one of the Masters of the Court of Exchequer.

After hearing these witnesses, the Committee determined to proceed with the Bills of Exchange and Promissory Notes Bill, which had been brought in by Mr. Keating and Mr. Mullings, and made several amendments therein, and added clauses authorising a Judge under special circumstances to set aside a judgment on such terms as may be deemed just; and to impound a bill or note where fraud is suggested. The Common Law Procedure Acts of 1852 and 1854, and the Rules of Court thereon, are to be made applicable to proceedings under this Act, and the Act is to be extended to the County Palatine Courts of Lancaster

and Durham. The Committee adopted the title of the other Bill, and the present is to be called “The Summary Procedure on Bills of Exchange Act, 1855.”

It was proposed in the Committee, that “Every protest of a Notary Public of a Bill of Exchange or Promissory Note shall be received in all proceedings under the Act as evidence of the facts therein set forth, in like manner as the protest of Foreign Bills of Exchange is now received as evidence of such facts.” But this proposition was negatived by 5 to 3.

The Committee then agreed to the following Report, dated the 15th May, and which has been presented to the House:—

“The Select Committee to whom the Bills of Exchange Bill [Lords], and the Bills of Exchange and Promissory Notes Bill were referred, and who were empowered to send for Persons, Papers, and Records, and to report their observations, and the minutes of evidence taken before them, to the House; have considered the matter to them referred, and agreed to the following Report:—

“Your Committee proceeded to consider the two Bills committed to them.

“As it appeared to your Committee that each Bill was founded on the principle of preventing fictitious defences on Bills and Notes, and of giving greater facilities to parties seeking the assistance of a Court of Justice, your Committee determined to hear evidence as to the cost of proceedings under the Scotch system, as proposed in the Bills of Exchange Bill and under the English system, adopted in the Bills of Exchange and Promissory Notes Bill.

"Your Committee were of opinion, that it was unadvisable to introduce a new system of procedure, if the forms of the English Law could be made available for the object in view and, on hearing the evidence, it appeared to your Committee that summary procedure might be easily introduced into English Law, and that the costs under the Scotch system would not, on the whole, be less than those which would be incurred under English practice.

"Your Committee, therefore, determined to proceed with the Bills of Exchange and Promissory Notes Bill, and have carefully considered its provisions."

The amended Bill is as follows :—

**AMENDED BILLS OF EXCHANGE AND PROMISSORY NOTES BILL.**

THIS Bill, to facilitate the Remedies on Bills of Exchange and Promissory Notes by the Prevention of frivolous or fictitious Defences to Actions thereon, has been amended in, the Select Committee of the House of Commons, by adding four clauses, marked from A to D. The Bill recites, that *bond fide* holders of dishonoured bills of exchange and promissory notes are often delayed and put to unnecessary expense in recovering the amount thereof by reason of frivolous or fictitious defences to actions thereon, and it is expedient that greater facilities than now exist should be given for the recovery of money due on such bills, and notes :

The proposed enactments are, that

1. All actions upon bills of exchange or promissory notes commenced within six months after the same shall have become due and payable, may be by writ of summons in the special form contained in schedule A. to this Act annexed, and indorsed as therein mentioned; and it shall be lawful for the plaintiff, on filing an affidavit of personal service of such writ within the jurisdiction of the Court, or an order for leave to proceed, as provided by the Common Law Procedure Act, 1852, and a copy of the writ of summons and the indorsements thereon, in case the defendant shall not have obtained leave to appear and have appeared to such writ according to the exigency thereof, at once to sign final judgment in the form contained in schedule B. to this Act annexed (on which judgment no proceeding in error shall lie) for any sum not exceeding the sum indorsed on the writ, together with interest, at the rate specified (if any), to the date of the judgment, and a sum for costs to be fixed by the Masters of the Superior Courts or any three of them, subject to the approval of the Judges thereof or any eight of them (of whom

the Lords Chief Justices and the Lord Chief Baron shall be three), unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the plaintiff may upon such judgment issue execution forthwith.

2. A Judge of any of the said Courts shall, upon application within the period of *twelve* days from such service, give leave to appear to such writ, and to defend the action, on the defendant paying into Court the sum indorsed on the writ, or on affidavits satisfactory to the Judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the Judge may seem fit.

3. *Clause A.*—After judgment, the Court or a Judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and may give leave to appear to the writ, and to defend the action, if it shall appear to be reasonable to the Court or Judge so to do, and on such terms as to the Court or Judge may seem just.

4. *Clause B.*—In any proceedings under this Act it shall be competent to the Court or Judge to order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the Court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

5. The provisions of the Common Law Procedure Act, 1852, and the Common Law Procedure Act, 1854, and all rules made under or by virtue of either of the said Acts, shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.

6. *Clause C.*—The provisions of this Act shall apply, as near as may be, to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham, and the Judges of such Courts, being Judges of one of the Superior Courts of Common Law at Westminster, shall have power to frame all rules and process necessary thereto.

7. Nothing in this Act shall extend to Ireland or Scotland.

8. *Clause D.*—Citing this Act in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Summary Procedure on Bills of Exchange Act, 1855."

It will be observed that the proposed six days "diligence" in Lord Brougham's Bill has been extended to twelve in the amended Bill.

## REPORT OF THE COMMISSIONERS ON COUNTY COURTS.

### FEEs.

We proceed now to state the substance of the Commissioners' Report on the Fees of the County Courts.

I. They have, in the first place, considered whether the fees can be levied in a manner less burthensome to the suitors; and the following is the result of their investigation:—

By the 9 & 10 Vict. c. 95, s. 37, it was provided, that certain fees mentioned in Schedule D. to that Act should be taken for the benefit of the Judges, clerks, and high bailiffs, irrespective of the general fund fee, which was established by section 52 of the same Act, and is applicable to different purposes. By section 37, a power was reserved to one of her Majesty's principal Secretaries of State, with the consent of the Commissioners of her Majesty's Treasury, to alter but not to increase the fees mentioned in the schedule to the Act. A similar power was contained in s. 52, with respect to the general fund fee. More extensive powers of altering the fees were afterwards conferred on the same authorities by the 12 & 13 Vict. c. 101, s. 6.

Soon after the establishment of the Courts, many complaints were made by the suitors, both of the scale mentioned in the schedule and of the contribution to the general fund. The principal objections to the then existing scale were:

First, that the amount of fees, including the first and second classes, was excessive:

Secondly, that the language of the schedule was so vague that the officers were enabled to take more fees than the Legislature intended:

Thirdly, that as the amounts in respect of which the fees were to be taken, rose only by four steps, from 1*l.* to 20*l.*; the suitor who claimed 2*l.* 1*s.* was compelled to pay as much as he who claimed 5*l.*, and the suitor who claimed 10*l.* 1*s.* was compelled to pay as much as he who claimed 20*l.*

In the year 1850, one of the Secretaries of State and the Lords Commissioners of the Treasury, in consequence of these complaints, determined to exercise the powers with which they were invested under the 12 & 13 Vict. c. 101, s. 6, and the 9 & 10 Vict. c. 95, s. 52, to alter the amount of fees taken in the County Courts, and the Committee of County Court Judges appointed

by the Chancellor, in pursuance of the 12 & 13 Vict. c. 101, s. 12, were requested to consider the matter, and to frame a scale of fees in conformity with their views, on the principle that, having regard to the average amount of the business in the Courts, the fees, including the general fund fee, should produce a sufficient revenue to support the whole of the establishment and its incidents, with the exception of the salaries of the treasurers, which were by section 23 of 9 & 10 Vict. c. 95, expressly charged upon the consolidated fund.

As to the first objection, the Committee proposed that the suitors should be relieved to the extent of one-seventh of the total amount of the revenue produced by the fees. It was suggested that by analogy to other taxes, a diminution in the amount of the fees would produce a corresponding increase of business, and consequent increase of revenue, and therefore that no permanent loss would result from the proposed reduction. The Government consented to undertake the risk of the non-productiveness of the Court, and accordingly the Committee were requested to frame a scale on the principle of such a reduction. The scale now in force was accordingly made, and came into full operation at the beginning of the year 1851.

The anticipations of the Committee were fulfilled. The revenue of 1850 was 252,000*l.* Assuming that the same amount of business continued in the Courts, the revenue of 1851, after the diminution of one-seventh, or 36,000*l.*, would have fallen to 216,000*l.* By the returns of the year 1851, however, it appears that the total revenue of that year was 272,000*l.* This increased productiveness cannot be attributed entirely to the principle suggested by the Committee, as the sum of 36,000*l.* appears by the returns to have been produced by business resulting from the extended jurisdiction over claims not exceeding 50*l.*, which in the year 1851 came into force. Still, however, the remaining sum of 20,000*l.* beyond the anticipated 216,000*l.* was fairly attributable to the above-mentioned principle, and in the following year the revenue continued to increase.

In the formation of the scale, the Committee abolished some fees, and reduced the amount of others, and with regard to the general fund, the fee of 1*s.* in the pound on claims exceeding 40*s.* was reduced to 8*d.* The exemption of sums not 20*s.*, and the fee of 6*d.* in the pound on sums not exceeding 40*s.*, were left as by law provided.



The second objection, founded on the vague language of Schedule D., was removed by employing the language in which the present scale is expressed.

The third objection, as to the sudden rises in the scale, with reference to the amounts of claims, was met by substituting a scale, in which the amounts of the suitors' respective claims were treated as the basis for calculating the fee according to an arithmetical progression, increasing by 1*l.* from the sum of 1*l.* to 20*l.* inclusive.

It will be observed that in the above scale, the progression stops at 20*l.* If it continued beyond 20*l.* to claims as high as 50*l.*, the fees would have been so great as probably to exclude that class of business from the Court, and so far prevent the revenue from recovering from the loss which the diminution of fees had caused.

The principles of the above scale, independent of the reduction of amounts, appear to be, that as the suitors were to be compelled to support the Court by paying for the use of it, they should pay in proportion to that use, and as the Court was peculiarly the poor man's Court, the poorer suitors should pay less than the richer ones.

The answers to the inquiries made by the Commissioners on this subject satisfy them that if the Courts are to be rendered self-supporting, this scale is in principle correct, although certain fees, which are hereafter referred to, have been shown by more extended experience to be unnecessarily burthensome to the suitor.

The Commissioners then proceed to point out, how the scale in force, supposing the present amount of revenue to be required from the Courts, may be rendered less burthensome to the suitors.

One of the most burthensome fees which a suitor is called upon to pay, is the mileage fee to the bailiff in respect of serving and executing the process of the Court. As this fee is paid to the bailiff in respect of his greater labour in travelling to perform his duty, it is equally applicable to the lowest and the highest amount of claim. Such a fee, so far as the bailiff is concerned, is just; but so far as the suitor is affected, is unjust. It compels a plaintiff to pay more or less for the service of his process according to the accidental circumstance of the distance which his debtor resides from the Court. The principle of local jurisdiction is, that in each district, so far as possible, every suitor should have his remedy

brought to his own home. This is an object, however, which, though desirable, it is impossible completely to attain, but a greater approximation to its attainment may be made than is effected by the present scale of fees.

The Commissioners recommend, that in all cases of service or execution of process at a distance from the Court, the same fee should be paid, whatever that distance may be. This fee should be of such an amount as that, having regard to the average number of services and executions, a total equal to that at present raised should be secured. The high bailiff would then keep an account, in conformity with the mode of calculating distances now existing in the Court, of the miles travelled, and at the audit, the treasurer should pay over to him a proportionate sum. No danger of fraud upon the treasurer would exist, because the books of the Court disclosing the place of the defendant's residence, and the distance book of the Court showing the number of miles to that residence, would afford a complete check. By this means, the burthen would be equally divided among all the suitors of the Court, the bailiff would be compensated for his extra labour, and the principle of local administration of justice more completely enforced.

From the calculations made, it appears that, in lieu of the mileage fee, an additional penny in the pound on the sum claimed would produce the required amount. This will be little more than a nominal increase of fee to suitors, where the defendant resides near the Court, but will be a most important relief of the burthen now imposed in other cases.

Another fee to be found in the existing scale is that for conveying a defaulting party to prison, where he has been committed under the penal clauses of the 9 & 10 Vict. c. 95. The remarks made with reference to the mileage fee, in the case of process, are equally applicable to this fee.

The Commissioners propose, on the same principle, that one fee should be substituted for the mileage fee in such cases, however distant the gaol may be from the Court.

The calculations which have been made lead to the conclusion, that a fee of 1*s.* in the pound on the sum for which the warrant issues would produce the required amount. This alteration would have an effect similar to that produced by the proposed change in the service fee.

It will be seen that in hereafter considering how far the amount produced by the present fees should be reduced, it is proposed to abolish all mileage fees, and to remunerate the bailiff, in respect of the distance travelled by him in the performance of his duties, out of the produce of the fees proposed to be retained.

The fee for *keeping possession* of goods taken in execution until the time of sale, also requires modification. It will be observed, that the poundage is, by the present scale, calculated on the amount for which the execution issues.

The Commissioners think that the fee for possession ought to be calculated only on the *value of the goods actually seized*, but not exceeding the amount mentioned in the warrant, such value to be ascertained and determined, if necessary, by the clerk. This is more consistent with the nature of a fee for possession having relation to value. In many instances, that which is taken into possession is of less value than the amount on which the fee is calculated. In such cases, whether the loss fall upon the plaintiff or the defendant, injustice is the result. In the majority of instances, however, the loss falls upon the plaintiff, as the fees are a prior charge upon the goods seized, and, consequently, the fruits of the execution are less capable of satisfying the plaintiff's demand.

The fee on proceedings for the *recovery of tenements*, also requires modification. At present, it is paid upon the annual rent or value of the tenement sought to be recovered.

The Commissioners think that the fee should be regulated by the rent or value for the term of demise, whatever that may be, not exceeding one year. Thus, if the premises are demised for a week, month, or other period less than a year, fees only in proportion to the amount of the rent or value of that term should be taken, such value to be determined, if necessary, by the clerk.

The fee payable on proceedings in *replevin*, they think should also be altered. At present, it is regulated by the amount distrained for, whereas, from the nature of replevin itself, which seeks to recover things distrained, the value of the things so distrained ought on the principle of poundage to regulate the amount of fees payable.

They recommend, therefore, that the fee in replevin should be payable in proportion to the value of the goods distrained, such value to be ascertained and determined, if necessary, by the clerk. This and the last-mentioned fee, they propose should be subject to the restriction mentioned in the scale with reference to 20l.

In cases of *jurisdiction by consent*, under section 17 of 13 & 14 Vict. c. 61, the fees are at present calculated on the sum of 50l.

The Commissioners think that in claims where the parties may, by consent, give jurisdiction to the County Court, under the above section, the fees should not be calculated upon a greater amount than that of 20l. The number of cases under the consent clause, tried in the County Courts, has been exceedingly small, and, therefore, the diminution of revenue in consequence of lessening the fees in question must be almost nominal, and not sufficient therefore to justify an exception to the general rule, that the fees should not be calculated on a greater amount than 20l.

The fees of the third class are those payable in respect of *appraisements* on executions under the 9 & 10 Vict. c. 95. Where an appraisal takes place on an execution, the appraiser is entitled to 6d. in the pound on the value of the goods for the appraisal of them, besides the stamp duty; and, in respect of advertisements, catalogues, sale and commission, and delivery of goods, 1s. in the pound on the net produce of the sale. A difference of opinion exists between some of the persons consulted, as to the propriety of continuing this fee; some are of opinion that appraisal is a useless form; others, that it is a useful and necessary check on the proceedings of the bailiff in enforcing executions.

The Commissioners are in favour of the latter opinion; but they think that the appraisal ought to be rendered more efficient by requiring the appraiser to affix a specific price to the different articles to be sold, instead of adopting the present mode, which is, in general, to put one total amount as the value of the whole property to be sold. By the mode proposed, the practice of selling goods at a sacrifice would be checked, and friends or relatives might be willing to purchase, for the benefit of the defendant or his family, certain articles which are now involved in one common valuation. No difficulty would arise in compelling the persons who act as ap-

praisers to perform their duty in the way suggested, as by law those who act in that character are appointed by the high bailiff, with the written sanction of the Judge.

Next, with respect to the fourth class of fees, which are receivable by the bailiff, in respect of *distresses* made after notice of rent due, when executions are levied. By adopting the provisions of the 57 Geo. 3, c. 93, which now regulate those fees, injustice is done to the tenant where a small amount of rent is distrained for; and to the bailiff, where a large amount is claimed.

The Commissioners think that the fees on distresses would be more properly calculated on the same scale as in executions. By adopting the principle applied in executions, the fee being proportionate to the amount, the objections would be obviated.

From the inquiries made, the Commissioners are led to believe that the alterations suggested in the existing fees would be productive of an increase of the revenue produced by the Courts.

II. The Commissioners have next considered whether the amount of fees can properly be reduced?

They first discuss a question which is preliminary but essential to this branch of the inquiry, that is,—whether the County Courts should be self-supporting? They are of opinion that they should not. To compel the suitors to pay fees sufficient to support the establishment appears unjust in principle, as that which is for the benefit of the public should be supported by the public; but that at present, financial reasons will render it impracticable to reduce the fees in strict conformity with the principle enunciated. They think, therefore, that the suitors should pay an amount of contribution sufficient to remunerate the clerks and high bailiffs of the Court, and that all other expenses of the establishment, such as Judges' salaries, buildings, stationery, and other matters, should be borne by the public revenue.

The Commissioners have prepared a scale relating to the first and second class of fees, which, assuming the present amount of business of the Courts to continue, will produce a sum equal to the present amount of remuneration received by the officers.

In the scale they propose, the general principle of the existing scale, so far as the gradual increase in proportion to the amount of demand is concerned, is adopted.

The fees which they propose to abolish or modify are as follows:—

First, to abolish the general Fund Fee which will have the effect of relieving the suitors to the extent of	Per Annum.
Secondly, to modify the hearing fee where the parties consent to a judgment. At present, the fee payable on a judgment to which the defendant consents is the same in amount as that payable on a judgment where the claim has been disputed and the cause tried. They propose to reduce that fee from 2s. 3d. in the pound, the fee now paid, to 1s. in the pound on the amount of the claim. This would relieve such suitors to the amount of about	£37,000
Thirdly, to abolish the fees on payment of money into and out of Court and on notice of payment into Court, now producing the sum of about	18,000
Fourthly, to discontinue the bailiff's mileage fee on serving and executing process. This fee produces about	14,000
Fifthly, to discontinue the bailiff's mileage fee on conveying defaulting parties to prison. That fee now produces about	15,000
The bailiff, they propose, should be paid in proportion to the distance travelled by him in serving or executing process, or conveying committed parties, out of the fund which the remaining fees produce, in the manner already suggested.	4,000
Sixthly, to abolish the fees on issuing a judgment summons, which now produces about	
Fees on the hearing of the same	4,500
Fees on new trials	200
Fees on special defences	500
Fees on adjournments, which now produce about	1,200
Fees on subpoenas, which now produce about	2,200
Fees on application for leave to sue out of the district, which now produce about	2,000
Fees to the high bailiff for issuing warrant to the clerk of another Court, which now produce about	700
Seventhly, they further recommend that the summons and service fees, together amounting to 8d. in the pound, should be reduced to 6d., and the hearing and service or order fees, together amounting to 2s. 3d. in the pound, should be reduced to 2s. This will have the effect of diminishing the produce of these fees by about	21,000
	£124,800

The total of the sums produced annually by the fees which the Commissioners pro-

pose to discontinue or reduce is rather less than one-half of the present annual amount (253,518*l.*) levied on suitors.

With the third and fourth classes of fees, which are received by the bailiffs and appraisers, the Commissioners do not propose to interfere, except by the alterations already suggested.

The fees in *insolvency* and *protection cases* are of a special and occasional nature, and therefore cannot conveniently be made part of a general scheme of fees of Court. Besides, the duty performed by the officers are in many respects of a nature different from those devolving on them in other matters. When the Commissioners consider the jurisdiction in insolvency and protection cases, it may probably be found desirable to modify the present scale, and to define more strictly the fees to be taken.

The payment of 5*s.* to the jury to continue.

With the above suggested modifications and diminutions, the following will be the proposed

#### Table of Fees.

For every plaint,—6*d.* in the pound on the amount of the demand.

Notice.—No other fee whatever is to be taken on the entry of a plaint.

Judgments by consent under the 13 & 14 Vict. c. 61, ss. 8 and 9, and judgments by default,—1*s.* in the pound on the amount of the demand.

For every hearing,—2*s.* in the pound on the amount of the demand.

Notice.—No other fee whatever is to be taken for the hearing or trial of a cause.

For issuing any warrant against the body or goods, 1*s.* 6*d.* in the pound on the amount for which such warrant issues.

For application for new trial, or to set aside proceedings,—6*d.* in the pound on the amount of the demand.

Notice.—No other fees than the above to be taken, on any account whatever.

No increase of fees shall be made by reason of there being more than one plaintiff or defendant.

#### High Bailiff's Fees.

For keeping possession of goods till sale, per day (including expenses of removal, storage of goods, and all other expenses whatever), not exceeding five days, 6*d.* in the pound on the value of the goods seized. [This, however, does not apply to cases of interpleader, in which the costs and expenses of possession are to be in each case specially allowed by the Judge, but which shall in no case exceed the costs incurred by the bailiff in keeping possession.]

N. B.—In cases within the ordinary juris-

diction of the Court, the above-mentioned poundage and fees are to be taken; but where the sum demanded is above 20*l.*, the poundage is to be taken on 20*l.* only.

In all cases of jurisdiction conferred on the Court in pursuance of the 13 & 14 Vict. c. 61, s. 17, the poundage is to be calculated as upon the amount of 20*l.*

All fractions of a pound, for the purpose of calculating the poundage, shall be treated as an entire pound.

Where the plaintiff recovers less than the amount of his claim, so as to reduce the scale of costs, the plaintiff to pay the difference.

The several fees payable on proceedings in replevin to be regulated on the above scale, by the value of the goods distrained, and on proceedings for the recovery of tenements, by the yearly, monthly, or weekly rent of the tenement, according to the letting or value of the tenement sought to be recovered; but in no case to exceed the fees payable on a demand of 20*l.*

In cases of interpleader, the summons shall be issued and the cause heard without the previous payment of any fees; but the costs of the summons and the poundage for the hearing shall be estimated on the value of the goods claimed, and shall be included in the general costs. The value of such goods, in case of dispute, shall be assessed by the Judge, who in his discretion at the hearing shall direct whether any and what costs shall be paid, and by, and to whom.

Subpoenas to be issued gratis, but must be served by the parties or their agents.

The Commissioners propose, that the fees, or sums in the name of fees, mentioned in the above table (with the exception of the fees called "High Bailiffs' Fees"), shall form a fund out of which the clerks and high bailiffs of the Courts shall be paid the salaries and allowances hereafter suggested.

For the reasons already stated, the Commissioners recommend the suggested diminution in the amount to be raised by fees, even though the business of the County Courts should not be increased.

Judging, however, from experience, an increase of business, producing an increase of revenue, would probably be the result. Thus, a deficiency of 36,000*l.* on a revenue of 252,000*l.*, or one-seventh, was more than half supplied in 1851, in consequence of the diminution in the amount of the fees and more just and convenient mode of collecting them.

The Extension Act, 13 & 14 Vict. c. 61, and the existing scale came into operation about the same time. An increase of revenue to the amount of 36,000*l.*, produced by cases under the extended jurisdiction,

was the result. Since then, a variety of other Acts of Parliament have passed conferring new jurisdiction on the Court, from which, as fees must be paid on the new business introduced into the Court, a corresponding increase of revenue may be anticipated. The recommendations contained in the present report, if adopted, would also to a certain extent increase the jurisdiction, and render the Court a more efficient tribunal.

One advantage attending the scale last suggested would be the simplification of the accounts of the Court. This would lead to some diminution in the expense.

#### REMUNERATION OF CLERKS AND HIGH BAILIFFS.

The Commissioners then proceed to another important branch of the inquiry, — namely, the proper mode of remunerating the clerks and high bailiffs of the Courts.

At present, although every clerk and high bailiff receives a certain amount of compensation for his services, yet in a very large majority of instances, such an amount of remuneration is not received as is calculated to secure the services of efficient officers.

This leads to the consideration of a preliminary question which has been much discussed, as to whether the clerks and high bailiffs should be paid by fees only; by salary only; or partly by salary and partly by fees.

The Commissioners come to the conclusion that it would be desirable that the clerks should be paid by salaries, and that such salary should be subject to a periodical revision by the Treasury.

In the case of the high bailiff, however, the duties of his office are of so peculiar a description, and the efficient discharge of them so little under the immediate control of the Judge, that a strong interest in the complete performance of his duties ought to exist. They think, therefore, that besides his salary, he should be allowed such remuneration in respect to mileage and executions as, with reference to the circumstances of each district, the Lords Commissioners of her Majesty's Treasury may from time to time direct.

First, with reference to the *clerks*.

The Commissioners propose that the clerk of each Court, in which the plaints entered do not exceed the number of 200 a year, should have a salary of 50*l.* per annum, and that in Courts where the plaints

exceed 200, the salaries should be increased by sums of 5*l.* for every 25 plaints, up to 1,000 inclusive, and then by sums of 4*l.* for every 25 plaints up to 6,000 inclusive; but in Courts, where the plaints exceed that number, the amount of increased salary should be at the discretion of the Lords Commissioners of her Majesty's Treasury. Out of the salaries now appointed, the clerk should be required to pay the salaries of the clerks he employs to assist him.

According to this computation, — The Clerks Salary on

1,000 plaints would be about	£220
on 2,000	380
on 3,000	550
on 4,000	700
on 5,000	850
on 6,000 and upwards	1,000

With reference to those clerks, who have been placed by the Government on salaries varying from 500*l.* to 600*l.*, the principle above stated should only be applied in remunerating their successors.

Secondly, with reference to the *high bailiffs*.

They propose that their salaries should vary on the same principle as those of the clerks, but should only be one-fourth of the amount to which the clerk is entitled. This, we think, is a suitable proportion to preserve between the salaries of the two officers, having regard to their respective duties, and taking into consideration that they are to be additionally remunerated for executing warrants and for mileage on the service of all process.

It appears that the expenditure of the County Courts will, by the adoption of this scheme, be increased by about 30,000*l.* per annum beyond the present revenue.

This scheme of salaries, the Commissioners think, should be adopted whether the existing fees, modified as suggested, continue to be taken, or the table mentioned in the second part be introduced into the County Courts.

#### LAW OF MORTMAIN.

BILL TO AMEND THE LAW RELATING TO THE CONVEYANCE OF LANDS FOR CHARITABLE USES.

By the 9 Geo. 2, c. 36, no *heror*, lands, &c., should be given, granted, &c., in trust or for the benefit of any charitable uses whatsoever, unless such gift, conveyance, &c., were made by deed sealed, and delivered in the presence

of two or more credible witnesses twelve calendar months at least before the death of such donor or grantor, and were enrolled in his Majesty's High Court of Chancery within six calendar months next after the execution thereof, and unless the same were made to take effect in possession for the charitable use intended immediately from the making thereof, and were without any power of revocation.

By the 9th Geo. 4, c. 85, it was enacted, that where any lands, tenements, or hereditaments, or any estate or interest therein, had been purchased for a full and valuable consideration, in trust or for the benefit of any charitable uses whatsoever, and such full and valuable consideration had been actually paid for the same, every deed or other assurance then already made for the purpose of conveying or assuring such lands, &c., in trust or for the benefit of such charitable uses (if made to take effect in possession for the charitable use intended immediately from the making thereof, and without any power of revocation, &c., whatsoever for the benefit of the grantor, or of any person or persons claiming under him), should be as good and valid and of the same effect, both for establishing derivative titles and in all other respects, as if the several formalities by the 9 Geo. 2, c. 36, had been duly observed.

Doubts have arisen whether it is possible to make any good or valid assurance for charitable uses of any hereditaments of copyhold or customary tenure: and it is expedient to make provision for further remedying defects and obviating difficulties and as to enrolment, in regard to deeds and assurances of hereditaments conveyed for charitable uses in manner hereinafter provided: it is therefore proposed to enact as follows:—

1. No deed or assurance heretofore made or hereafter to be made for any charitable uses whatsoever of any hereditaments of any tenure whatsoever, or of any estate or interest therein, upon a full and valuable consideration actually paid at or before the making or perfecting such deed or assurance, or reserved by way of rent, rentcharge, or other annual payment, or partly paid at or before the making or perfecting such deed or assurance, and partly reserved as aforesaid, without fraud or collusion, shall be deemed to be null and void within the meaning of the first recited Act, if such deed or assurance has been at any time prior to the passing of this Act, or shall be within six calendar months next after the passing of this Act, or shall be within six calendar months next after the making or perfecting such deed or assurance, enrolled in her Majesty's High Court of Chancery.

2. No deed or assurance heretofore made for any charitable uses whatsoever of any hereditaments of any tenure whatsoever, or of any estate or interest therein, not upon such full and valuable consideration as in the first section of this Act is mentioned, shall be deemed to be null and void within the meaning of the first-recited Act by reason of such deed or assurance not having been sealed and

delivered in the presence of two or more credible witnesses, or by reason of such deed or assurance not having been enrolled in her Majesty's High Court of Chancery within six calendar months next after the execution thereof, or by reason of such deed or assurance, or any deed forming part of the same transaction, containing any grant or reservation of any peppercorn or other nominal rent, mines or minerals, or easement, or any covenants as to the position or description of buildings, the formation or repair of streets or roads, drainage or drains, or any covenants of the like nature, providing for the use and enjoyment as well of the hereditaments comprised in such deed or assurance as of any other adjacent or neighbouring hereditaments of the donor or grantor, or of any person or persons claiming under him, not comprised in such deed or assurance, or any right of entry on nonpayment of any such rent or breach of any such covenant, or any covenant indemnifying the donor or grantor against any prior incumbrance, or any stipulations of the like nature, for the benefit of the donor or grantor, or of any person or persons claiming under him, or in the case of any such assurance of hereditaments of copyhold or customary tenure, or of any estate or interest therein, by reason of the same not having been made by deed indented, if such deed or assurance has been at any time prior to the passing of this Act or shall be within six calendar months next after the passing of this Act enrolled in her Majesty's High Court of Chancery.

3. No deed or assurance hereafter to be made for any charitable uses whatsoever of any hereditaments of any tenure whatsoever, or of any estate or interest therein, not upon such full and valuable consideration as in the first section of this Act is mentioned, shall be deemed to be null and void within the meaning of the first-recited Act by reason of such deed or assurance, or any deed forming part of the same transaction, containing any such grant, reservation, covenants, right of entry, or stipulations for the benefit of the donor or grantor, or of any person or persons claiming under him, as in the second section of this Act is mentioned, or, in the case of any such assurance of hereditaments of copyhold or customary tenure, or of any estate or interest therein, by reason of the same not being made by deed indented, if such deed or assurance shall within six calendar months after the making or perfecting such deed or assurance be enrolled in her Majesty's High Court of Chancery.

4. In all cases where the charitable uses of any deed or assurance heretofore made for conveyance of any hereditaments for any charitable uses, and not enrolled in her Majesty's High Court of Chancery prior to the passing of this Act, have been declared by any other deed or instrument, it shall be deemed sufficient for all intents and purposes whatsoever, if such deed or instrument declaring the charitable uses has prior to the passing of this Act been so enrolled as last aforesaid; but if

neither such deed or assurance, nor the deed or instrument declaring the uses thereof, has been so enrolled as last aforesaid, then it shall not be necessary to enrol such deed or assurance, but every such deed or assurance shall be absolutely and to all intents and purposes null and void unless the deed or instrument declaring the charitable uses thereof shall within six calendar months next after the passing of this Act be enrolled in her Majesty's High Court of Chancery.

5. In all cases where the charitable uses of any deed or assurance hereafter to be made for conveyance of any hereditaments for charitable uses shall be declared by any other deed or instrument, it shall not be necessary to enrol such deed or assurance, but every such deed or assurance shall be absolutely and to all intents and purposes null and void, unless the deed or instrument declaring the charitable uses thereof shall, within six calendar months next after the making or perfecting of such deed or assurance conveying the property to such charitable uses, be enrolled in her Majesty's High Court of Chancery.

6. That the provisions in this Act for remedying defects in titles shall extend and apply, so far as the same shall be applicable, to subsequent deeds or assurances only.

7. Nothing in this Act contained shall extend to give effect to any deed or assurance heretofore made so far as such deed or assurance has already been avoided by any suit at law or in equity or by any other legal or equitable means whatsoever, or to affect or prejudice any suit at law or in equity actually commenced for avoiding any such deed or assurance, or for defeating the charitable uses in trust or for the benefit of which such deed or assurance has been made.

8. That whenever any hereditaments of any tenure whatsoever, or any estate or interest therein, have or has been or hereafter shall be conveyed or assured for any charitable uses whatsoever, to or in favour of any trustees or trustees for such charitable uses, the original deed or assurance shall vest the hereditaments, estate, or interest thereby conveyed or assured, not only in the original trustees or trustee, but also in their or his successors in office for the time being duly appointed, and the deed, document, or order of Court by which such successors in office shall be appointed may be given and shall be received in evidence in all Courts and proceedings, and shall be evidence of the truth of the several matters and things therein stated: Provided always, that where such hereditaments shall be of copyhold or customary tenure, and liable to the payment of any fine, with or without a heriot, on the death or alienation of the tenant or tenants thereof, it shall be lawful for the lord or lady of the manor of which such hereditaments shall be holden, on the next appointment of a new trustee or trustees thereof, and at the expiration of every period of 40 years so long as such hereditaments or any estate or interest therein shall be devoted to charitable uses to

receive, and take a sum corresponding to the fine and heriot (if any) which would have been payable by law upon the death or alienation of the tenant or tenants thereof, and such payments shall be in full of all fines and heriots (if any) payable to the lord or lady of the manor of which such hereditaments are holden while the same shall be devoted to charitable uses, and the lord or lady of such manor shall have all such powers for the recovery of the sums hereby made payable as such lord or lady could have had in the event of the tenant or tenants of such hereditaments having died, or having alienated the same, in reference to the fines and heriots (if any) heretofore payable; provided also, that nothing in this Act contained shall be construed to extend any of the provisions of the last hereinbefore recited Act to any case whatsoever further or otherwise than is by this Act expressly provided.

## NOTICES OF NEW BOOKS.

*An Action at Law: being an Outline of the Jurisdiction of the Superior Courts of Common Law, with an Elementary View of the Proceedings in Personal Actions and in Ejectment.* The Second Edition. By ROBERT MALCOLM KERR, Barrister-at-Law. London: Bond, 1855, pp. 378.

THE utility of this treatise is shown by its early arrival at a second edition. It comprises—1st. An Outline of the Constitution of the Superior Courts of Common Law. 2nd. An Analysis of the matters which come within their cognizance. 3rd. The various proceedings in Personal Actions and in Ejectment.

Mr. Kerr has pursued the logical arrangement of Sir William Blackstone in his volume on "Private Injuries." The work is peculiarly adapted to the legal student in both branches of the Profession. Looking at the wide field which the student is expected to traverse in preparing for the ordeal of examination, it is well that concise, clear, and accurate guides, like the present outline, are supplied for his assistance.

The introduction to the volume comprises—1. Redress by Act of the Parties. 2. Redress by Operation of Law. 3. Redress by Suit in Courts.

The First Part is devoted to—1. The Superior Courts of Common Law. 2. The Appellate. 3. The Auxiliary Tribunals.

The Second Part contains—1. Injuries cognisable in Courts of Common Law. 2. Injuries that affect the Rights of Persons. 3. Injuries that affect the Right to Real Property. 4. Injuries that affect the Right to Personal Property.

The Third Part treats of—1. The Jurisdiction of the Superior Courts of Common Law. 2. The Sittings and Proceedings of the Court. 3. Process, Arrest, Forms of Action, &c. 4. The Writ of Summons. 5. Service of the Writ. 6. Judgment by Default. 7. Appearance. 8. The Pleadings. 9. Incidental Proceedings. 10. Demurrer. 11. Trial. 12. Proceedings after Trial. 13. Judgment. 14. Proceedings after Judgment. 15. Execution. 16. Writs of Execution.

The diligent articulated clerk who makes himself master of this elementary and practical volume, may reasonably calculate on passing in the Common Law department of the examination.

## MOOT POINTS OF PRACTICE.

### To the Editor of the Legal Observer.

STR.—In the case of *Hesketh v. Fleming* (*Legal Observer*, vol. 50, p. 39), I find an order to proceed was discharged. The reasons stated in the report seem to me entirely unsatisfactory. My impression is, that an order to proceed cannot be set aside, although no doubt the proceeding taken in pursuance of the order, as well as all subsequent proceedings, may.

By the 17th section of the Common Law Procedure Act, 1852, it is enacted, "that it shall be lawful for the plaintiff to apply from time to time on affidavit to the Court or a Judge, and in case it shall appear to the Court or Judge that the writ has come to defendant's knowledge, or that he wilfully evades service and has not appeared, it shall be lawful for the Court or a Judge to order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to such Court or Judge may seem fit." Then suppose, as in the case cited above, the defendant make an affidavit that he was out of the jurisdiction when the writ issued, and therefore the writ should have been No. 2, Schedule A., instead of No. 1, Schedule A. The 21st section of the Common Law Procedure Act, 1852, would cure this defect, and the position of the defendant would simply be changed by contending that the order, instead of being made under section 17 (as it probably was), was made under section 18 (which it probably was not). Now, section 18 applies *only* to cases where the defendant is out of the jurisdiction, and enacts, "that it shall be lawful for the Court or a Judge, on being satisfied by affidavit as to cause of action, and that writ came to defendant's knowledge, or that he is living out of the jurisdiction to delay or defeat his creditors, to direct from time to time "that the plaintiff be at liberty to proceed, subject to such conditions as to such Court or Judge may seem fit, *having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case.*

Provided always, that the plaintiff is required to prove the amount of debt or damage either before a jury or one of the Masters, and such proof shall be a condition precedent to his obtaining judgment." And it will be observed, according to the same section, "the time for appearance shall be regulated by the distance from England of the place where the defendant is residing."

In *Hesketh v. Fleming*, therefore, the Judge on granting the order, having regard to the time allowed for the defendant to appear, directed the plaintiff to be at liberty to proceed, unless the defendant appeared within seven days from the service thereof, making (with eight days allowed by the writ) at least 15 days; whereas, in an ordinary case the order to proceed directs, "that the plaintiff be at liberty to proceed as if personal service had been effected—execution not to issue until after the expiration of eight days from service of notice of application for order." But it is not strictly correct to say the time to appear is left to the discretion of the Judge, as the plaintiff is actually the party to exercise the discretion, the Judge is only to have regard to the time being reasonable. The operation of the Judge is *ex post facto* only *pro tanto*.

Upon the hypothesis of the transmutation of sections, it might be correct to say that the defendant in the above case had a right to set aside the judgment, if it had been signed without proof, before a jury or one of the Masters, of the amount of the debt or damage, but this is the utmost the defendant could (as it appears to me) have had a right to ask—the order to proceed remains intact without being impugned.—Possibly there may be some inaccuracy in the report, but as the point is one of importance, I trust you will excuse my drawing attention to the peculiarity of the case.

### A. v. B.

On a judgment, dated May 19, 1849.

Ca. Sa., issued May 28, 1849.

Ca. Sa., renewed under s. 94 } April 23, 1855.  
of Com. Law Proc. 1854, }  
Query.—Can A. renew the ca. sa., April 22, 1856, without reviving the judgment?

See Com. Law Proc. Act, 1854, s. 94

1852, ss. 124 & 125.

1853, ss. 128 & 129.

Should such revival be by suggestion, which must be obtained by summons, or rule nisi or writ of error?

What is meant by the present practice alluded to in the 129th section of the Com. Law Procedure Act, 1852?

If any of your Correspondents can furnish information on the above subject, I think the Profession generally will be glad to receive it; I for one most certainly shall, and shall feel obliged by their courtesy as well as yours, in being the medium of communicating useful points of practice, which a solicitor would hardly be justified in going to his pleader for.

MERLIN.



## CANDIDATES WHO PASSED THE EXAMINATION.

*Easter Term, 1855.*

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Addison, William Richard Oliver Cromwell . . . . .	Thomas Hewitwick
Allenby, Frederick George . . . . .	Henry Williams
Anderson, Robert . . . . .	Weir Anderson
Ascroft, William . . . . .	Robert Ascroft
Atchison, John Simons . . . . .	Frederick Michael Selwyn; Ellis Clowes
Atwood, John . . . . .	Walter Charles Venning; John Jones Atwood
Barker, Thomas John . . . . .	Henry John Barker
Bellingham, Edward Nugent . . . . .	William Bennett Friesland
Bennett, Francis Grey . . . . .	William Bennett
Booth, John, jun. . . . .	Henry John Marshall
Boughton, John . . . . .	William Hutcheson Collins
Boydell, Charles Fields . . . . .	Samuel Boydell
Brooke, Richard Arnaud . . . . .	George James Duncan
Burns, Arthur Stephen . . . . .	West Awdry
Burnett, Robert French, M. A. . . . .	Robert Whitley Lumley; Frederick Iltid Nichol
Church, Adolphus Edgar . . . . .	John Henry Church
Clapham, Alfred Henry . . . . .	Robert Bartlett
Clegg, Alfred, B. A. . . . .	William Broome Parker; Isaac Hall
Clifton, John Henry . . . . .	John James Gutch; Henry William Ravenscroft;
	James Barry Girling
Cooke, Richard . . . . .	Richard Newcomb Thompson; George Lewis
	Phipps Byre
Coulton, William Gordon . . . . .	John James Coulton
Croome, Thomas Myers . . . . .	Thomas Clatterback Croome
Darley, James Jacob . . . . .	Gabriel Goldsney; James Henry Street
Davies, Walter David . . . . .	Richard Hart
Dickinson, John Abraham . . . . .	Daniel Smith Bockett
Fairer, Christopher . . . . .	Frederick Weymas
Ford, Gerard . . . . .	Matthew Ford
Foster, William Chambers . . . . .	James Shelton Newbon
Fox, John, jun. . . . .	James Brockbank
Freer, Edward Hickman . . . . .	John Harward
Fulcher, Edmund Syer . . . . .	Ransom and Son
Gale, George . . . . .	William Riteon Dryden
Glanvill, Samuel . . . . .	Henry Davy; William Henry Palmer
Godden, William, B. A. . . . .	John Tilleard
Groce, Clair James . . . . .	David Black
Grenfell, George Pascoe . . . . .	Walter Borlase
Griffith, John Robert . . . . .	William Griffith
Hardisty, Robert Richard . . . . .	William Parke
Hathaway, Philip . . . . .	John Ellis Clowes
Head, Samuel Heath . . . . .	Thomas Bentley Hudson
Hill, William Money . . . . .	Messrs. Isaacson
Hooper, Edwin . . . . .	Henry Wilcocks Hooper; John Elliott Fox
Hughes, John, jun. . . . .	John Hughes
Isaacson, Egerton . . . . .	John Ralph Norton Norton
Jackson, Frederick . . . . .	Messrs. Standland
Jennings, Thomas Amas . . . . .	Joseph Radcliffe Wilson
Keighley, Samuel Jagger . . . . .	Edmund Minson Wavell
Kellock, Frederick . . . . .	Thos. Cresnar Kellock; Herbert Williams Reeves
King, Robert . . . . .	Leonard Hicks
Kipling, Alfred Upstone . . . . .	John Harvey Boys
Knight, Thomas Barnes, B. A. . . . .	James Vincent Harting
Lee, Thomas Alder . . . . .	Lee and Rees
Macdonald, Alexander Clieland . . . . .	Frederick Sanders
Mallam, George . . . . .	Thomas Mallam
Marrott, Thomas . . . . .	Thomas Lewis
Miller, Daniel James . . . . .	Timothy Sarr
Moore, Thomas, jun. . . . .	Thomas Moore
Moorhouse, Christopher . . . . .	John Wilson; Nathaniel Charles Milne
Morice, George . . . . .	John Hughes; Frederick Rowland Roberts
Neve, John, jun. . . . .	Messrs. Unett
Newman, Thomas James . . . . .	Thomas Ingle; Arthur Lovett
Ollard, Richard Dawbarn . . . . .	William Ludlam Ollard
Pain, William Henry Bellow . . . . .	Edward Pain
Parker, Francis . . . . .	John Parker
Pennington, Richard . . . . .	Thomas Harrison; William Strickland Cookson
Pickford, Charles Cornelius Forbes . . . . .	John Pickford; Edward Francis Ward
Powell, Philip John . . . . .	Joseph Billingsley Bullock

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned &amp;c.</i>
Reynolds, Francis Samuel . . . . .	William Collett Reynolds
Rider, James . . . . .	Francis Ferns
Rogers, John Robert Fyde . . . . .	William Gaseoigne Roy
Rosher, Alfred . . . . .	Andrew Van Sandau
Ruston, William . . . . .	John Sewell; George Clark
Sharman, Mark . . . . .	Alexander Sharman; Thomas Wesley Turnley
Sharp, Henry . . . . .	John England
Smith, Henry Shawe . . . . .	George Edensor Marsden
Smith, Joseph . . . . .	Robert Raper
Smith, William Williams . . . . .	James Smith
Somes, Frederick, B.A. . . . .	John Lawford
Tucker, Robert Coard . . . . .	Robert Tucker
Waddington, Walter Oakley . . . . .	William Foster
Walker, William John . . . . .	Henry John Coleman
Warra, John, B.A. . . . .	Robert Arnold Wainwright
Waters, Robert John . . . . .	William Hartcup
Watson, Peregrine . . . . .	Beauvoir Brock; John Rogers Browne; Francis Ferdinand Jeyes
Wharton, George Frederick . . . . .	Frederick Thomas
Whitaker, George . . . . .	John Earnshaw
Whitford, Edward . . . . .	Thomas Whitford
Whiting, Thomas Brown, jun. . . . .	James Button
Wood, Henry . . . . .	John Norris; William Norris
Wyman, George . . . . .	John Broughton

## ATTORNEYS TO BE ADMITTED.

## Queen's Bench.

## NOTICES FOR TRINITY TERM, 1855.

*Added to the List pursuant to Judge's Orders.**Clerks' Names and Residences.**To whom Articled, Assigned, &c.*

Birch, Thomas, 20, Canonbury Street, Islington . . . . .	B. R. Bayley, Basinghall Street
Denman, Thomas William, 6, Thanet Place, Strand; New Millman Street; and East Retford . . . . .	J. C. Mee, East Retford
Hooper, Thomas James, Warwick Chambers, Warwick Court; Ebury Street, Reading; Clifton; Teignmouth; Plymouth; Newport; Monmouth; and Bedford Street . . . . .	H. Sewell, Upton-upon-Severn
Koe, Ralph Pemberton, 33, Gloucester Place, Hyde Park . . . . .	J. H. Mousley, Derby; F. Newburn, jun., Darlington
Peace, Maskell, William, Wigan . . . . .	J. Mayhew, Wigan
Rising, William Henry, 9, Burton St., Eaton Square; and Rotherham . . . . .	W. F. Hoyle, Rotherham
Williams, Edward Withers, 27, Albert Street, Regent's Park; Stanhope Street; and Truro . . . . .	P. B. Smith, Truro

## RENEWED NOTICES.

*For the last Day of Trinity Term, 1855, of Persons who gave Notice of Admission for Easter Term, 1855, (pursuant to the Rule of Court of Hilary Term, 1853.)*

Barker, Thomas John, 10, Percy Crescent, Pentonville; Albany St.; and Blandford Place . . . . .	H. J. Barker, Wem
Cawley, John, 16, Clifford's Inn . . . . .	W. W. Blake, Castle Northwich
Dawson Peter Henry, 25, King's Sq., Goswell Road; Lamb's Conduit Street; and Longton . . . . .	F. Deacon, Preston
Dixon, Ralph, 2, Bedford Street, Strand . . . . .	T. Brown, Newcastle-upon-Tyne; W. C. Bousfield, Gray's Inn Square
Ford, Gerard, 8, Lincoln's Inn Fields . . . . .	M. Ford, Lincoln's Inn Fields
Foster, Wm. Chambers, 95, High Holborn; Fickering Terrace; and Doctors' Commons . . . . .	J. S. Newbon, Doctors' Commons
Gwynn, Albert, 11, Mornington Place; and Camberwell New Road . . . . .	W. Shepherd, Barnaley
Gregory Charles, Hampstead; and Eym . . . . .	E. Lambert, John Street
Harris, Charles Rice, Tredegar . . . . .	J. G. H. Owen, Pontypool
Hathaway, Philip, Wimbledon . . . . .	J. E. Clowes, King's Bench Walk

Jones, John Hughes, 5, New Ormond Street, Queen's Square; and Plas Oun, near Mold	P. Morris, Denbigh
Morice, George, 44, Doughty Street, Mecklenburgh Square; and Aberystwyth	J. Hughes, Aberystwyth; F. R. Roberts, Aberystwyth
Nash, Alfred Dormor, 14, Great Coram St., Russell Square	J. I. Wathen, Bedford Square; H. Crocker, Chancery Lane; A. Mayhew, Carey Street
Newbon, Thomas, Elms House, Hammersmith	J. S. Newbon, Doctors' Commons
Palmer, Gillies Charles, Grantham	W. Ostler, Grantham
Parker, Francis, 15, Bernard Street, Russell Square; and Woodside	J. Parker, Worcester
Pickford, Charles Cor. Forbes, 14, Old Jewry Chambers; Union Square; Congleton; and Burney	J. Pickford, Congleton; E. F. Ward, Burnley
Rhodes, Arthur, Muswell Hill	H. Masterman, Bucklersbury
Selby, James Addison, 14, East St., Lamb's Conduit Street; and Chelsea	T. Selby, West Mailing
Smith, Joseph, 25A, Dalby Terrace, City Road; Alfred Street; and Cockermouth	J. Steel, Cockermouth
Soames, Frederick, B. A., 33, North Audley Street; and the University of Cambridge	J. Lawford, Throgmorton Street
Whitaker, George, 16, Mount Street, Grosvenor Square; and Kingston-upon-Hull	J. Earnshaw, Kingston-upon-Hull
Wilson, Edmund Law Isaac, 37, Wharton Street, Pentonville	T. Harrison, Kendal

#### APPLICATIONS TO THE COURT TO TAKE OUT OR RENEW CERTIFICATES.

*On the last day of Trinity Term, 1855.*

Hart, William, 33, King Street, Southwark; Manchester; and Kennington.

#### APPLICATIONS TO A JUDGE AT CHAMBERS TO TAKE OUT OR RENEW CERTIFICATES.

*On the 13th day of June, 1855.*

Burrell, Edward Montague, Hornsey Row, Islington; and Compton Road.

Curteis, Edward, Peckham Grove, Camberwell; Pendoylan House.

Davis, Henry Fox, 4, Great Street, Bristol.

Elmhirst, James, 16, Tavistock Place, Tavistock Square; and Round Green, near Barnsley.

Foot, Charles Chalmers, 6, Gaul Place, Hammersmith.

Hancock, George, 17, Denbigh Street, Pimlico; and Yeovil.

Herring, Philip, 21, Charlotte Street, Portland Place; Arlington Place; and Brunswick Street.

Monckton, William Charles, 16, Polygon, Somers' Town.

#### SATURDAY HALF-HOLIDAY.

A PAMPHLET has just been published by Mr. J. R. Taylor, of Chancery Lane, containing the correspondence on the subject of the early closing of business on Saturdays, which we recommend to the attention of our readers.

We trust the general as well as the professional public will be induced to support the measure. When the commercial and trading classes have agreed to close their business, it will be easy for the Profession to do so. The

proposal to call a public meeting is therefore the most expedient course, and it is probable that when the Judges of our Superior Courts find the community in general in favour of the suspension of business on Saturday afternoon, they will be disposed to close the offices of the Court, and like the Houses of Parliament adjourn their sittings. We shall take an early opportunity of noticing the suggestions of the Solicitors for carrying the plan into effect.

#### PROFESSIONAL LISTS.

##### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 24th April, to May 18th, 1855, both inclusive, with dates when gazetted.*

Ashley, George, and Thomas Watts, 7, Old Jewry, City, Attorneys and Solicitors. May 1.

Bird, William Frederick Wratislaw, and James Moore, 5, Gray's Inn Square, Attorneys and Solicitors. May 8.

Campbell, Thomas Carrington, and Richard Henry Witty, Essex Street, Strand, Attorneys and Solicitors. May 4.

Carritt, Frederick, and George Osgood, 24, Basinghall Street, City, Attorneys, Solicitors, and Conveyancers. May 8.

Clarke, Edward, and Samuel Jackson, 29, Bedford Row, Holborn, Attorneys and Solicitors. May 18.

Elderton, Edward Merrick, and John Almarle Buckland, 3, Lothbury, Attorneys and Solicitors. May 15.

Leaky, James Shirley, and Edward Charsley, 24, Lincoln's Inn Fields, Attorneys and Solicitors. May 8.

Lee, Thomas, and Arthur Harris Rees, Witney, Attorneys, Solicitors, and Conveyancers. April 24.

Lumb, Henry, Robert John Lumb, Frede-

rick Lumb, and William Stewart, Wakefield, Attorneys, Solicitors, and Money Scriveners, so far as regards the said Wm. Stewart. May 4.

Mourilyan, Joseph Noakes, and Nicholas Henry Rowsell, 2, Verulam Buildings, Gray's Inn, Attorneys and Solicitors. May 5.

Pell, George, and Charles Edmund Banks, Welford and Northampton, Attorneys and Solicitors. May 8.

Wright, Newenham Charles, and John Thomas Dodd, 4, Furnivals Inn, Attorneys and Solicitors. April 27.

## NOTES OF THE WEEK.

### RESULT OF EASTER TERM EXAMINATION.

THE Candidates whose testimonials of service were deemed satisfactory were exactly 100 in number. Of these 95 attended on the day of examination, Tuesday, the 1st May, when 90 were passed, and 5 postponed.

The Examiners were—Sir A. D. Croft, one of the Masters of the Court of Queen's Bench, with Mr. Ansten, Mr. Alfred Bell, Mr. E. White, and Mr. J. Young.

### STATE OF THE COURT OF QUEEN'S BENCH.

On the 1st day of Term, Sir F. Thesiger called the attention of the Judges to the atmosphere of the Court. The smell was most offensive, and arose, he believed, from the drains.

Lord Campbell said, that the nuisance complained of was most perceptible, and if it arose from the neglect of any one whose duty it was to see that the Court was properly ventilated, the Judges ought to have him before them to answer for his neglect. Some inquiry should be made.

We understand that something will be done to remedy the evil complained of, as it is of very frequent occurrence.

### SITTINGS IN ERROR.

The Court will sit in error on causes from the Court of Queen's Bench on Tuesday, Thursday, and Friday in next week, and in error on cases from the Courts of Common Pleas and Exchequer on the day after Term (13th June) and following days.

The Court will also sit in error on Saturday the 26th May.

### QUEEN'S BENCH PRACTICE COURT.

Mr. Justice Wightman will preside in this Court during the present Term.

### LAW APPOINTMENTS.

The Queen has been pleased to appoint Henry James Meller, Esq., Barrister-at-Law, to be Resident Magistrate for the County of D'Urban, in the district of Natal, in South Africa.—From the *London Gazette* of May 22.

Thomas Phinn, Esq., Q. C., M. P., has been appointed to succeed Rear-Admiral W. A. B. Haidilton, as second Secretary to the Admiralty.

### NEW MEMBERS OF PARLIAMENT.

Richard Deasy, Esq., for the county of Cork, in the room of Edmund Burke Roche, Esq., who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

Sir Michael Robert Shaw Stewart, Bart., for the county of Renfrew, in the room of Colonel William Mure, who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Bazalgette v. Lowe.* April 27, 1855.

**TAKING BILL PRO CONFESSO AGAINST ABSCONDING DEFENDANT—INSERTING NOTICE IN GAZETTE.**

*Notice of the plaintiff's intention to take a bill pro confesso against an absconding defendant, under the 79th order of May 8, 1845, was inserted in the London Gazette on Tuesday, February 6, 13, 20, and 27—the day of motion being Thursday, March 8. Held, on appeal from and reversing the decision of Vice-Chancellor Wood, that the order had been substantially complied with.*

This was an appeal from the decision of Vice-Chancellor Wood (reported ante vol xlix., p. 448), holding that the provisions of the 79th

order of May 8, 1845,<sup>1</sup> had not been sufficiently complied with by the insertion in the

appeared in person or by his own solicitor, the plaintiff may cause to be inserted in the *London Gazette* a notice that on a day in such notice named (being not less than four weeks after the first insertion of such notice in the *London Gazette*) the Court will be moved that the bill may be taken *pro confesso* against such defendant; and the plaintiff is, upon the hearing of such motion, to satisfy the Court that such defendant ought under the provisions of Order 77 to be deemed to have absconded to avoid or to have refused to obey the process of the Court, and that such notice of motion has been inserted in the *London Gazette* at least once in every week from the time of the first insertion thereof up to the time for which the said notice is given; and the Court being so satisfied, and the answer not having been filed, may, if it so thinks fit, order the bill to be taken *pro confesso* against such defendant, either immediately or at such time or upon such further notice as under the circumstances of the case the Court may think proper."

<sup>1</sup> Which provides that—"In cases where any defendant who, under Order 77, may be deemed to have absconded to avoid or to have refused to obey the process of the Court, has had an appearance entered for him under Orders 29, 31, or 33, and has not afterwards

*Gazette* of a notice of motion to take this bill *pro confesso* against an absconding defendant, on Tuesday, February 6, 13, 20, and 27, where the motion was made on Thursday, March 8.

*Rolt* and *Eddis* in support.

The *Lords Justices* said, that the order had been substantially complied with, and that the application must accordingly be granted.

### **Vice-Chancellor Stuart.**

*Crook v. Crook.* May 3, 1855.

#### **FILING AFFIDAVIT.—SUMS IN FIGURES INSTEAD OF WORDS.**

Held, that an affidavit, containing the statement of sums in figures instead of in words at full length, cannot be filed.

This was an application for a direction to the Clerk of Records and Writs to file an affidavit in this cause, notwithstanding it contained the statement of sums in figures instead of in words at full length.

*Prendergast* in support.

The *Vice-Chancellor* said, that the practice to the contrary had been long established and could not be disturbed. The application was therefore refused.

### **Vice-Chancellor Wood.**

*Elston v. Eston.* May 2, 1855.

#### **SETTING DOWN CAUSE FOR HEARING WITHOUT ANSWER.**

Leave granted to set down cause for hearing, where all the defendants had appeared, but had not answered, although interrogatories had been filed—none of the defendants opposing.

This was an application for leave to set down this cause for hearing, where all the defendants had appeared, but had not answered. It appeared that the plaintiff had filed interrogatories, but the defendants did not oppose.

*C. Wood* in support.

The *Vice-Chancellor* granted the application.

### **Court of Queen's Bench.**

*Marshall v. Jackson.* April 18, 1855.

#### **COMMON LAW PROCEDURE ACT, 1852.—ERROR, COSTS OF.**

*Proceedings in error were taken upon judgment for want of plea, and on issue thereto joined the jury found for the defendant below, and the judgment was set aside accordingly: An application was refused to amend the rule for judgment by directing it to be set aside with costs.*

This was a motion for a rule nisi to amend the rule for judgment for the defendant in this action, who was an infant, by directing it to be set aside with costs. It appeared that proceedings in error had been taken upon judgment being signed for want of plea, and on the issue thereto joined the jury had found that the defendant was an infant, and the judgment was accordingly set aside.

*H. Buller*, in support, referred to the 15 &

16 *Vict. c. 76, s. 148*, which enacts, that "a writ of error shall not be necessary or used in any cause, and the proceeding to error shall be a step in the cause, and shall be taken in manner hereinafter mentioned;" and contended that the costs in error were costs in the cause.

The *Court*, however, held, that the section had only reference to the mode of proceeding, and that all the former attributes of error remained the same, and refused the rule accordingly.

*Baynard v. Symons.* May 7, 1855.

#### **COMMON LAW PROCEDURE ACT, 1854.—ATTACHMENT BY EXECUTOR OF CREDITOR.—ORDER TO REVIVE.**

Held, that the executor of a creditor is not entitled to an order for the attachment of a debt due from a third person under the 17 & 18 *Vict. c. 125, s. 61*, unless he obtain an order to revive or enter a suggestion under the 15 & 16 *Vict. c. 76, s. 129*.

This was an attachment of a debt due to the defendant in this case, under the 17 & 18 *Vict. c. 125, s. 61*, which enacts, that "it shall be lawful for a Judge, upon the *ex parte* application of such judgment creditor either before or after such oral examination, and upon affidavit by himself or his attorney stating that judgment has been recovered, and that it is still unsatisfied and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt."

It appeared that the creditor had died, and that his executor had not obtained an order under the 15 & 16 *Vict. c. 76, s. 129*; and the question now arose, whether the executor was entitled to the attachment.

*Maynard* for the garnishees; *M. Smith* and *Milward* for the executor.

The *Court* said, that the power of attaching property in the hands of third parties was in the nature of an execution, and analogous to a judgment creditor under the 1 & 2 *Vict. c. 110, s. 14*, who was obliged to become a party to the judgment before he could sue. The order would therefore be discharged, but without costs.

<sup>1</sup> Which enacts, that "in cases where it shall become necessary to revive a judgment by reason either of lapse of time or of a change by death or otherwise of the parties entitled or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned, or apply to the Court or a Judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the Court that such party is entitled to have execution of the judgment and to issue execution thereupon."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“*SEE attended at your service.*”—*Shakespeare.*

SATURDAY, JUNE 2, 1855.

### COUNTY COURTS EXTENDED JURISDICTION.

It is important that the Profession should take notice of the rapid and extensive progress of the County Courts and the enlargement of their jurisdiction in various branches of the Law. These tribunals, now established in every city and county, and holding their sittings monthly in upwards of 400 towns, were appointed in the year 1847 “for the more easy recovery of small debts.”

Their jurisdiction now extends—1st, to Protection Cases; 2nd, to a large class of Nuisances; 3rd, to Actions of Replevin; 4th, to certain cases in Ejectment; 5th, to Penalties not exceeding 100*l.* under the Customs Act; 6th, after the 1st May, 1855, to certain injuries under the Shipping Act; 7th, to Partnership Accounts to a limited amount; 8th, to the Distribution of Shares under an Intestacy; 9th, to Legacies not exceeding 50*l.* under a will; 10th, to Friendly Societies; 11th, to Industrial and Provident Societies; 12th, to Charitable Trusts; 13th, to disputed Succession Duties not exceeding 50*l.*; 14th, Insolvency Cases; 15th, Literary and Scientific Institutions; 16th, Absconding Debtors; 17th, Chancery Inquiries; 18th, Winding up Joint-Stock Companies.

Such are the comprehensive and various subjects which from Session to Session have been brought under the jurisdiction of these “Small Debt Courts.” The title given to them in the Statute by which they were constituted is now a palpable misnomer. They are (though limited) Common Law, Equity, and Insolvency Courts. They may be called Local Courts or County Courts, but are no longer Small Debt

Courts. The Legislature at first intended that they should supersede the petty tribunals called Courts of *Conscience* or Courts of *Request*, where the parties were heard in person, and where their own evidence was receivable. These petty Courts were generally limited to 5*l.*, but in several instances extended to 10*l.*, and in some to 15*l.*; and it was expedient to render their jurisdiction uniform.

It was foreseen, at the time these local Bills were before Parliament, that their powers would not ultimately be restricted to the recovery of small debts. When the Government determined to increase their patronage by raising these appointments to the dignity of Judgeships and giving them to Barristers-at-Law, it was predicted that the threescore Judges, or *Senegint* (as a noble lord would call them)—many of them able and ambitious men, desirous of additional honour, and all willing to increase their emoluments,—would not rest satisfied with powers similar to the abolished Courts of *Conscience*, but would struggle (as they incessantly have) for larger jurisdiction and higher rank. Indeed, when Queen’s Serjeants, Queen’s Counsel, and Serjeants-at-Law, deemed it not inconsistent with their position to accept the office, it might reasonably be anticipated that they would strive to exalt the Courts over which they presided to a more important position than the Legislature intended.

Nothing could exceed the activity with which the merits of the County Courts were brought under the notice of the public by the learned contributors to the press, who for the most part belong to that class of the community from whence the Judges are chosen. In addition to the Judges, all the several officers of the Court were in-

terested in enlarging their powers, and petitions in great number were presented for extending the jurisdiction from 20*l.* to 50*l.* The suggested improvements in the mode of procedure in the Superior Courts were too long delayed, and the County Courts succeeded in their object.

There is a great fallacy,—not to call it a wilful misstatement,—in describing the advantages of the County Courts, namely, that they *try* many thousand actions yearly which previously could not be brought, because of the enormous costs of the Superior Courts. With comparatively few exceptions, it is absurd to call the hearing and adjudicating on small debts as “*trials*.” They are without defence; and the only points which the Judge has to determine are—the length of time he will allow for payment, and the amount of the several instalments:—matters which might safely be left to the clerk of the Court.<sup>1</sup>

If the number of undefended cases were deducted from the gross number of plaintiffs, the really litigated actions would be comparatively few. And it is certainly a flagrant misrepresentation to assert that prior to the passing of the Small Debts' Act there were no means of enforcing the payment of small debts.

It will be observed from the extracts we have already made from the Report, that the Commissioners, whilst disposed to amend the practice of the Court (which was much needed) and to render it uniform, do not recommend the pecuniary jurisdiction to be extended. They think that claims of considerable amount are best decided in the Superior Courts; they are of opinion that small claims are beneficially decided in the County Courts, and they define such claims as not exceeding 20*l.* They leave the concurrent jurisdiction from 20*l.* to 50*l.* as now prescribed, but with power to the defendant to remove claims above 20*l.* on giving security for the amount claimed and costs.

THE Commissioners, in their Report describe the jurisdiction of the County Courts under the departments of *Legal*, *Equitable*, and *Auxiliary*.

<sup>1</sup> The report states that as many as 300 summonses have been made returnable in one day, and the Commissioners recommend that the number be reduced to 150. Supposing six or eight hours were given to these 150 cases, even then 20 causes must be disposed of in a single hour. To talk of “trying” 300 causes in a day is preposterous.

#### 1st. LEGAL JURISDICTION.

The legal jurisdiction is of three kinds: *exclusive, concurrent, and by consent.*

The *exclusive* jurisdiction is conferred by the 9 & 10 Vict. c. 95.

By sect. 58 of that Act, it is provided, “that all pleas of personal actions, where the debt or damage claimed is not more than 20*l.*, whether on balance of account or otherwise, may be holden in the County Court without writ; provided always, that the Court shall not have cognizance of any action of *ejectment*, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation, under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage.”

The jurisdiction is protected by sect. 90 of 9 & 10 Vict. c. 95, which prevents the removal of any plaint into the Superior Courts, unless the debt or damage claimed shall exceed 5*l.*, and then only by leave of a Judge of one of the Superior Courts, on such terms as he shall think fit. This provision is confirmed by sect. 16 of 13 & 14 Vict. c. 61.

The jurisdiction, in cases not within the above provisions, and not within the exceptions contained in sect. 128 hereafter mentioned, is enforced by sect. 129, which deprives the plaintiff of costs, if he obtain a verdict in a Superior Court for a sum less than 20*l.* in actions founded on contract, or less than 5*l.* if founded on tort; and where the verdict in such cases is for the defendant, he is entitled to his costs, as between attorney and client; unless in either case, the Judge trying the cause shall certify that the action was fit to be brought in the Superior Court: by sect. 13 of 13 & 14 Vict. c. 61, these provisions are extended to cases in which the parties have not proceeded to a verdict. The provisions as to deprivation of costs are modified by sect. 11 of the same Statute, which excludes judgments by default from their operation.

The decision of the Judge of the County Court whether assisted by a jury or not is final in cases within this branch of the jurisdiction.

**Protection Cases.**—Another branch of exclusive jurisdiction of the Court is that which is exercised in protection cases. By sect. 4 of 10 & 11 Vict. c. 102, the jurisdiction under the “Protection Acts” (5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96), is transferred to the County Court in cases arising more than twenty miles from the General Post Office in London. The decision of the Judge in these cases is final.

**Nuisances.**—Where, under the 11 & 12 Vict. c. 123, a nuisance has been removed under certain circumstances from premises by

a person other than the owner or occupier, the former is entitled to sue the latter in the County Court for the expenses incurred in so doing. In these cases, although questions of title may and do frequently arise, the decision of the Court on the matter is final.

**Concurrent Jurisdiction.**—The jurisdiction given by sect. 58 of 9 & 10 Vict. c. 95, is, by sect. 128, rendered concurrent with that of the Superior Courts, where the parties reside more than 20 miles from each other, or where the cause of action does not arise wholly or in some material point within the district within which the defendant dwells or carries on his business at the time of bringing the action, or where an officer of the Court is a party, except in respect of a claim to goods taken in execution by process of the Court.

By 13 & 14 Vict. c. 61, s. 1, a jurisdiction, where the amount of the claim for debt or damages does not exceed 50*l.*, is conferred on the County Court, subject to the exceptions contained in the proviso of sect. 58 of the 9 & 10 Vict. c. 95. This jurisdiction is, however concurrent with that of the Superior Courts, and is subject to appeal at the instance of either party who is "dissatisfied with the determination or direction of the Court, in point of law, or upon the admission or rejection of any evidence." The 15 & 16 Vict. c. 54, s. 2, provides that such appeals shall be disposed of as part of the ordinary business of the Court to which the appeal is made.

**Replevin.**—The County Court has also concurrent jurisdiction in replevin. By sect. 119 of 9 & 10 Vict. c. 95, all actions of replevin in cases of distress for rent in arrear, or damage feasant, must be brought into the Court created by this Act instead of the Common Law County Court; but either party, on complying with certain conditions, may remove the plaint, if he declares to the Court "that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise, is in question, or that the rent or damage in respect of which the distress shall have been taken, is more than 20*l.*" Unless, therefore, the plaint be removed in conformity with the provisions of that section, the County Court has jurisdiction to decide all questions of title, and is not limited to any amount.

**Ejectment.**—The proviso in sect. 58 is modified in certain cases of ejectment by sect. 122 of the same Act, which enables landlords, after the expiration of the tenancy, to recover possession of houses, lands, or other corporeal hereditaments, where the rent of value of the premises does not exceed 50*l.* a year, and no fine has been paid.

**Customs.**—Jurisdiction in certain matters connected with the administration of the Customs Law has lately been conferred on the Court. By sect. 263 of 16 & 17 Vict. c. 107 (the Customs Act), the Crown may sue in the

County Court for duties or penalties not exceeding in any case the sum of 100*l.* The decision of the Judge is final in such cases. By sect. 318, in case of an alleged illegal seizure of any boat, vessel, or goods by the custom house officer, an action may be brought against him in the County Court where the damages claimed do not exceed the amount to which the jurisdiction of the Court is limited, and sect. 319 provides that the case shall not be tried by a jury, except by consent of both parties, and that the decision of the Judge shall be subject to appeal in the same manner as is allowed in other actions triable in the Court.

**Jurisdiction by consent.**—Under the provisions of sect. 17 of 13 & 14 Vict. c. 61, the parties may by consent confer a jurisdiction on the County Court, notwithstanding that the amount of the claim may exceed 50*l.*, and that the action is one "in which the title to land, whether of freehold, copyhold, leasehold, or other tenure, or to any tithe, toll, market, fair, or other franchise shall be in question." It will be observed that the cases in which questions of law may by consent be decided by the County Court are not so numerous as those excepted by sect. 58 of 9 & 10 Vict. c. 95. By the 17 & 18 Vict. c. 16, s. 1, the decision of the Judge in such cases is subject to appeal on the same grounds as in cases where the sum claimed exceeds 20*l.* but does not exceed 50*l.*

**Arresting ships.**—By the 527th section of 17 & 18 Vict. c. 104 (the Shipping Act), in the event of an injury having been done by one vessel to another in any part of the world, it will on and after the 1st May, 1855, be competent for the Judge of the County Court, in certain cases, on the complaint of the injured party, to direct the vessel to be detained until satisfaction is made for the alleged wrong, or security is given to abide the event of a legal proceeding in respect of it.

## 2nd. EQUITABLE JURISDICTION.

The equitable jurisdiction of the County Court is concurrent and by consent, but can not be treated as exclusive except in protection and insolvency cases.

This jurisdiction is confirmed by the 9 & 10 Vict. c. 95, and several subsequent Statutes.

**Partnership; distributive share; legacy.**—By sect. 65 of 9 & 10 Vict. c. 95, the jurisdiction of the Court is extended to the recovery of any demand not exceeding the sum of 20*l.* (now by the 13 & 14 Vict. c. 61, to 50*l.*) "which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will."

By sect. 17 of 13 & 14 Vict. c. 61, the con-



sent of the parties will give jurisdiction in such cases to any amount.

**Friendly Societies.**—By 13 & 14 Vict. c. 115, s. 22 (Friendly Societies Act), if a dispute arise between the members and the trustees, treasurer, or other officer or committee, and is of such a kind that for the settlement of it, according to the laws now in force, recourse must be had to a Court of Equity, it may be referred at the option of either party to a Judge of a County Court.

This Act is continued by the 15 & 16 Vict. c. 65, s. 4, to the end of the Session of 1854, and by the 17 & 18 Vict. c. 101, to the 1st October, 1855, and the end of the then next Session of Parliament.

**Industrial and Provident Societies.**—The above provisions applicable to friendly societies, are extended by 15 & 16 Vict. c. 31, s. 8, to industrial and provident societies.

**Charitable Trusts.**—By the 16 & 17 Vict. c. 137 (The Charitable Trusts Act, 1853), sect. 32, where the gross annual income of any charity does not exceed 30*l.*, and where equitable relief is required, jurisdiction, subject to certain conditions contained in the Act, is given to the County Court to entertain the application, and to "give such relief and make such orders and directions in relation to the matter of such application as now might be made or given by the Court of Chancery, or by the Lord Chancellor, entrusted with the care and commitment of the custody of lunatics, in a suit regularly instituted, or upon petition, as the case may require." It is provided, however, by sect. 41, "that no County Court shall, upon any proceedings under this Act, have jurisdiction to try or determine the title at law or in equity to any real or personal property, or any term or interest therein, as between any charity or the trustees thereof, and any person holding or claiming such real or personal property, term or interest, adversely to such charity, or to try or determine any question as to the existence or extent of any charge or trust." By sect. 39 of the Act, a right of appeal, subject to certain conditions, is given to the party who alleges himself to be aggrieved by or dissatisfied with any order made by any County Court. It may be observed, that although the jurisdiction under this Act extends only to charities, the annual income whereof does not exceed 30*l.*, yet should the amount with which a defaulting trustee is chargeable exceed the sum of 50*l.*, there is no provision in the Statute which excludes the jurisdiction of the County Court in such a case.

**Succession Duties.**—By sect 50 of the 16 & 17 Vict. c. 51 (Succession Duties Act) any accountable party dissatisfied with the assessment of the Commissioners may, on complying with the conditions prescribed in the section, if the "sum in dispute in respect of duty on

such assessment does not exceed 50*l.*, appeal to the Judge of the County Court, who will have jurisdiction to hear and determine the matter of the appeal and the costs thereof." His decision is final. Considering the interests in property, which is the subject of the duty, as well as the provisions of the Act with respect to its collection, it is evident that difficult questions of equity as well as of law may arise in the determination of the appeal. In consequence of the mode in which sect. 50 is expressed, a far greater sum than 50*l.* may become the subject of inquiry in the County Court.

**Insolvency and Protection.**—Both in protection and insolvency cases, various questions of an equitable description do of necessity frequently arise.

**Literary Institutions.**—By the Literary and Scientific Institutions Act, 1854, in case of any institution contemplated by the Act being desirous of dissolving itself and any dispute arising among the governing body or the members of the institution, the adjustment of its affairs shall be referred to the Judge of the County Court of the district in which the principal building of the institution shall be situate, who may make such order as he may deem requisite, or, if he find it necessary, he may direct that proceedings shall be taken in the Court of Chancery. The Judge is also to determine, in the event of disagreement, to what institution any surplus funds should be given.

### 3rd. AUXILIARY JURISDICTION.

The auxiliary jurisdiction of the Court is both legal and equitable.

**Absconding Debtors.**—By the 14 & 15 Vict. c. 52, power is given to the Judge of the County Court to issue his warrant for the apprehension of persons sworn to be indebted to the amount of 20*l.* or upwards, and who are about to quit England. This power is subsidiary to actions in the Superior Courts.

**Common Law Procedure Act.**—By the Common Law Procedure Act, 1854, it is provided, that where at any time after the issuing of the writ in any Superior Court of Common Law it appears to the satisfaction of the Court or a Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matter of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge to order that such matter either wholly or in part, in country causes, shall be referred to the Judge of any County Court.

**Chancery.**—By sect. 22 of the 9 & 10 Vict. c. 95, the Judge may be required to perform all such duties relating to causes or matters depending in Chancery, or any Judge thereof, or before the Chancellor in the exercise of any

authority belonging to him, necessary or proper to be done in the respective districts, as the Chancellor shall from time to time by any general order direct.

**Joint-Stock Companies Winding-up Act.**—By sect. 20 of the 12 & 13 Vict. c. 108 (an Act amending the Joint-Stock Companies Winding-up Act, 11 & 12 Vict. c. 45), Judges of County Courts sitting at places more than 20 miles from the General Post Office, are appointed Commissioners to act under the powers of that and the previous Statute, and the Master may, by any order under his hand, refer the whole or any part of the examination of any witnesses to any such Judge.

**Insolvency.**—The jurisdiction of insolvency under the 1 & 2 Vict. c. 110, is by the 10 & 11 Vict. c. 102, s. 10, vested in the County Court where the insolvent is in custody in any gaol more than 20 miles from the General Post Office. The Insolvent Court in London, to which, the petition of the insolvent must in the first instance be presented, is required in such cases to refer the hearing to the County Court.

In this branch of the jurisdiction, questions of law also arise.

**Common Law County Court.**—Except as to matters brought by Statute within the jurisdiction of the newly established Court, the County Court at Common Law retains its powers and jurisdiction, and may be held simultaneously with the modern County Court.

It is proper to observe, that no privilege is allowed to exempt any person from the jurisdiction of the modern County Court.

## EXECUTOR AND TRUSTEE BILL.

THIS Joint-stock Bill, for undertaking private trusts and executorships, was read a third time, and passed the House of Commons on Friday, the 25th May. It will probably be brought up to the House of Lords early next week. The members of the Profession will, no doubt, communicate their objections to the noble Lords with whom they are respectively acquainted.

We understand that petitions will be again presented against the Bill, although the opposition of lawyers is not very favourably received. The case was very fully heard last Session before a Select Committee of the House of Lords, including Lord St. Leonards and Lord Brougham. Nothing new has arisen to justify the renewal of the project; the South Sea Company has given up the contest, and many of the former directors of the new company

have withdrawn from it; and we are informed that the remaining "executive council" (as they call themselves) are proceeding in opposition to many of their shareholders; they have expended all the money received on the first call and have been obliged to subscribe 1,000*l.* out of their own pockets.

We fully expect that the Bill will be thrown out on the second reading, but those who are interested in the matter should not rely too confidently on this result; but bestir themselves amongst their lordships and convince them, as they did last Session, that the proposed alteration of the law is not only unnecessary, but would be highly prejudicial.

## BILLS OF LADING BILL.

THE preamble to this Bill recites, that by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property; that it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bona fide* holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid: And that it is expedient that foreign ships should be liable to detention in respect of claims upon bills of lading or contracts relating to the freight or hire of such vessels: It is therefore proposed to enact as follows:—

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have all rights of suit and otherwise in respect of such goods as if the contract for the carriage thereof had been made with himself.

2. Nothing herein contained shall prejudice or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason, or in consequence of such consignment or endorsement.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board: provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

4. Whenever any person shall have any claim for debt or damages against any foreign ship or the owners thereof, arising upon or out of any bill of lading of goods, or any charter or contract for or relating to the freight or hire of any such ship, to be performed wholly or in part within the United Kingdom, if such ship shall be found in any port or river of the United Kingdom, or within three miles of the coast thereof, it shall be lawful for the Judge of any Court of Record in the United Kingdom, or in Scotland the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon the existence of such claim being shown by any person applying summarily, to issue an order directed to any officer of Customs or other officer named by such Judge requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such claim, or has given security, to be approved by the Judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such claim, and to pay all costs and damages that may be awarded thereon, and any officer of Customs or other officer to whom such order is directed shall detain such ship accordingly.

5. In any case where it may appear that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any British officer of Customs to detain such ship until such time as will allow such application to be made and the result thereof communicated to him, and no such officer shall be liable for any costs or damages in respect of such detention unless the same shall be proved to have been made by him without reasonable grounds.

6. It shall be lawful for any owner, master, or consignee of a ship detained under either of the two preceding sections in the meantime, until such security as aforesaid can be given, at any time within two days from such detention, to deposit with the collector or chief officer of customs of the port at or near to which the ship shall be a sum equal to the

amount of the claim for which the ship shall be detained, with 20*l.* for costs; and thereupon the ship shall forthwith be discharged from such detention, and the officer detaining the same is hereby required to discharge such ship accordingly.

7. The money so deposited shall be subject to the order of the Judge to whom application shall be made for an order of detention, or, if such action, suit, or other proceeding as aforesaid shall have been instituted in any Court, shall be subject to the order of such Court, or of a Judge thereof; if an order for detention shall be finally refused, or shall be rescinded, or if such security as aforesaid shall be given, the said money shall thereupon be refunded to the person depositing the same; otherwise such money shall be security for all damages and costs that may be awarded in any such action, suit, or proceeding.

8. In any action, suit, or other proceeding in relation to such claim the person so giving security, or (if such security shall not be given) the person making such deposit as aforesaid, shall be made defendant or defender, and shall be stated to be the owner of such ship, and the production of the order of the Judge made in relation to such security or deposit shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding in respect of any damages and costs that may be awarded.

9. Any person applying for an order of detention shall give security to the satisfaction of the Judge for the costs and expenses of and attending the detention and release of the ship, and also on or before the commencement of any such action, suit, or other proceeding for the costs of the defendant or defender therein, and if the plaintiff or pursuer shall fail to recover therein he shall bear and pay all such costs and expenses; and if any such plaintiff or pursuer shall not recover the full amount of his claim it shall be in the discretion of the Court or Judge before whom the case shall be tried to deprive the plaintiff or pursuer of costs, by a certificate that there was not reasonable or probable cause for the claim.

## STATUTE LAW COMMISSION.

### INSTRUCTIONS FOR PREPARING BILLS IN PARLIAMENT.

THE Statute Law Commissioners, in the execution of their laborious and important duty, have laid down several useful and practical directions for the guidance of the draftsmen engaged in preparing Parliamentary Bills. We deem it right to notice these instructions for the benefit of those who are engaged in legislative labours.

THE Board consider it very desirable that all the Bills prepared under their superintendence should be framed on uniform principles,

and in a uniform style; they have therefore caused the following general rules and suggestions to be drawn up, which they request that draftsmen will observe, as far as possible, in drawing Consolidated Bills; without, however, considering them as absolutely inflexible where special reasons can be assigned for departing from them.

1. *Amendments of the law not to be introduced, but may be suggested.*—As the immediate object of the Commission is only to consolidate, not to amend, the law, the draftsman should consider it his duty, in the absence of special instructions, to present as correctly as possible the effect of the Statutes in force, without introducing amendments beyond the correction of clerical errors and omissions which appear from internal evidence to be unintentional; such amendments of the law as it may appear to him advisable to suggest he should, where practicable, present in a separate form; and in cases where they are necessarily mixed up with other matter, he should be careful to note what is new.

2. *As to the preservation of the exact words of existing Statutes.*—It is advisable to repeat exactly the material words of existing Statutes wherever such a course is compatible with concision and effectual consolidation.

3. *Incorporation of the Common Law.*—The Royal Commission expressly authorises the incorporation of the common or unwritten law, when found desirable, in the course of consolidating the statute law; some latitude therefore on this point is allowed to the draftsman; but he should bear in mind that the codification of the common law is no part of the objects of the present Commission, and that he is not to incorporate any part of it, except where he finds that he cannot produce a satisfactory consolidation of the statute law without it.

4. *General rules as to style.*—On the general subject of the proper style and phraseology of Acts of Parliament, the following extract from a paper in the Third Report of the late Board contains, perhaps, all that can be usefully laid down for the guidance of draftsmen. It is there observed that "brevity and perspicuity in Acts of Parliament are to be attained only as they are to be attained in all other compositions—by observing the rules of grammar and logic."

"All the faults of the statutes as to form and style which require remedy are purely literary faults, and may be remedied, and can only be remedied, by a purely literary reform, without any legislative assistance or interference. All that is wanted is, that the persons who draw Acts of Parliament should be firmly resolved to use a plain and concise style, to choose with care the proper words to express their meaning, and never to use a word that is not wanted; and, above all, to assume that they are writing for persons of ordinary candour and intelligence, and not, as is now the practice, to think it necessary to provide in terms against every foolish and unworthy quibble that unfair or unreasonable persons

may possibly suggest. So long as Acts of Parliament are drawn on the assumption that Judges or others will not understand, or will pretend not to understand, what is meant by 'the 1 & 2 Vict. c. 1,' until the Legislature enacts that they may and shall understand it, it is vain to hope that any improvement as to brevity and perspicuity is attainable."

It is conceived that, as a general rule, brevity is only desirable within the limits above suggested; that Acts of Parliament should be specimens of pure English; and that what has been termed a "Parliamentary short-hand" is not required. Remarks on this subject will be found in the paper above cited, Third Report, p. 232.

In some modern Acts of Parliament it seems to have been assumed that no new phraseology, new modes of reference, or other formal improvements, may be introduced without giving an express legislative sanction to the innovation. Many interpretation clauses, the enactments authorising the use of short titles, and other similar provisions, appear to have been inserted under this impression. Such provisions, however, cannot be necessary, and generally have an awkward appearance. If intelligible language is used, a declaration that it shall be understood cannot be needed; and for the Legislature to give itself permission to express its will in what form it pleases must be at least superfluous.

As a general rule it is convenient to arrange the matter in shorter paragraphs than are now commonly met with.

5. *Interpretation clauses and definitions.*—"Interpretation clauses" or definitions have in recent legislation been introduced in a very inconsiderate manner, and a great number of those in modern Acts are objectionable, or at least superfluous; but *symbols*, if properly used, are certainly often useful.

By a *symbol* is meant a short way of expressing an assemblage of many particulars for which ordinary language provides no general term; and where such assemblages of particulars have to be several times repeated in the course of an Act, it is proper and convenient to use a symbol in their place, and to give a definition of what it is intended to mean; but care should be taken,—1st, not to use such symbols except where language does not provide an adequate generic term; and, 2ndly, so to select and employ the symbols as to make it always apparent that they are symbols, and not used in their primary sense.

An instance of disregard of the first of these cautions is the common provision that "lands" shall mean "messuages, lands, tenements, and hereditaments," where, as "hereditaments" includes all the rest, that word might have been used without any interpretation clause at all; and as an instance of uncertainty whether a word is used in its symbolic or its primary sense, the late case of *Bartlett v. Kierwood* (2 Ellis & Bl. 771), may be referred to, where a doubt arose whether the word "year" was used in its ordinary sense, or in that which

had previously been given to it by the interpretation clause. It seems scarcely necessary to add, as a further caution, that words need never be interpreted, unless there is some reason to suppose that they will not be rightly understood unless interpreted; or that *two* symbols should never be provided for one set of particulars; yet both these rules are often disregarded.

Some attempts have been made by the Legislature to enact some general interpretations or definitions of a different nature from the symbols above adverted to; that is, to fix arbitrarily and prospectively the meaning of words which are in their nature ambiguous. This is an erroneous practice, and likely to lead to confusion. If a word is ambiguous, that is, if there is only one word to signify two different things, it is a defect in the language, which should, and easily can be guarded against by the use of a proper context; but to enact generally, that henceforth the word shall only mean one of the two things that it really means is not within the proper functions of legislation. However, it is necessary that the draftsman should bear in mind that there are some enactments of this kind, in order that he may frame his language accordingly; there are the 20 Geo. 2, c. 42, s. 3, the 7 & 8 Geo. 4, c. 28, s. 14, and the 13 & 14 Vict. c. 21, and possibly some others.

6. *Schedules of Forms, &c.*—There are some cases in which it is convenient to give model forms of the documents to be used in carrying out the provisions of an Act; as, where the Act is to be worked by a large number of persons in inferior official situations, without any central directing authority, as magistrates' clerks, constables, &c., but except in cases of this kind, it is better not to prescribe any forms in the Act itself, but to empower some competent person or Court to prepare them. The same remark applies to the insertion of detailed rules, directing the mode in which the principle of an enactment is to be carried out. When no considerations of practical inconvenience interfere, it is better to leave these also to be settled by the authority intrusted with the working of the Act. This course both greatly shortens Acts of Parliament, and makes it easier to alter the rules from time to time after they have been tested by experience. There are also numerous cases in which it seems to have been considered in modern Acts of Parliament that forms must be laid down by authority, in which no assistance of the kind can be required by any persons of ordinary intelligence. For instance, the 9 & 10 Vict. c. 27, informs the Registrar of Friendly Societies that he may certify that the rules of a society are in conformity to law in this form:—

"I hereby certify, that these rules [or alterations of rules] are in conformity to law, and to the provisions of the statutes in force relating to friendly societies."

And the 11 & 12 Vict. c. 20, informs occupiers of land that they may give authority to

other persons to kill hares on their lands in this form:—

"I, A. B., do authorise C. D. to kill hares on my lands within the ——— of ———."

Forms such as these can never be necessary.

Matters are often put into schedules which would come more properly in the body of the Act. A schedule is properly something supplementary, and it is not a simple or natural style to relegate that which is the principal subject of an Act to a schedule, unless from its form or length it cannot conveniently be introduced in the structure of a sentence. As an instance of the fault referred to, the 14 & 15 Vict. c. 80, may be cited, where we find an enactment that "the provisional order of the General Board of Health referred to in the schedule applying the Public Health Act, 1848, to the borough of Great Yarmouth, in the county of Norfolk," shall be confirmed; and on turning to the schedule we find that it contains only these words:—"Provisional order of the General Board of Health submitted for the confirmation of Parliament. Great Yarmouth." The schedule in an enactment of this kind ought to be incorporated in the clause which refers to it, as indeed in this instance it is, so that it is superfluous as well as misplaced.

7. *Incorporation by reference.*—The practice of making a new law by incorporating by reference the provisions of existing Acts, on another subject, so as to make it necessary to read them *mutatis mutandis*, should be used with great caution, as the result often is that brevity is attained at the cost of error and confusion.

8. *Mode of describing Acts.*—It is unsafe to refer to Acts by the number of the year and chapter only. Numbers are particularly liable to be miscopied and misprinted; and, with respect to Acts of the "Local and Personal (Public)" and the "Private" series, there is a further risk that they will not be distinguished from Acts of the "Public General" series bearing the same number. The titles of Acts should always be referred to, not necessarily at length, but enough to identify them; the year and chapter should also be mentioned for convenience of reference.

Several instances have already occurred of erroneous reference to numbers; some will be found enumerated in the First Report of the former Commission, pp. 24-27; and in the Third Report, p. 203.

Parliamentary "short titles" are not convenient, from not giving the number of the chapter, which makes it necessary to turn to the index before they be found in the Statute Book.

9. *Dates.*—Such expressions as *January last*, *January next*, &c., should be avoided. Four Acts of Parliament at least have been made necessary within the present century to correct the consequences of using such referential expressions instead of absolute ones—43 Geo. 3, c. 104; 11 Geo. 4 and 1 Wm. 4, c. 71; 13 & 14 Vict. c. 19; 13 & 14 Vict. c. 27.

10. *Repeals*.—Every enactment which is superseded or rendered unnecessary by a new Act ought to be expressly and in terms repealed. Enactments that “all Acts inconsistent with this Act,” or “so much of such and such an Act as is inconsistent with this Act,” shall be repealed, or “any law or usage to the contrary notwithstanding,” should never be inserted. They have in reality no effect (for the inconsistency itself is a repeal) and they convey no available information to any one. Where accidental circumstances make it possible to specify what former Acts are repealed, it is of no use to say anything about repeals at all.

With respect to the form of repeals, they may sometimes be conveniently effected by *separate Acts* (as recommended by Mr. Coode in the First Report of the late Board, p. 82), so that “the repealing Act and the repealed Act” would sleep together; and the plan has been adopted in the case of the Merchant Shipping Act of last Session, c. 120, and in some earlier instances; in other cases this course would not be practically so convenient as to have the new enactments and the repeals in a single Act; on this subject, therefore, no general rule can be laid down, and the draftsman must be guided by the nature of the subject. The tabular form is the clearest way of enumerating Acts for repeal.

11. *Compulsory and permissive words*.—Considerable confusion both of language and thought is produced by the indiscriminate use of “shall” and “may” or other compulsory and permissive terms, and also by the uncertain way in which enactments are made with reference to time. Accuracy in this respect is important.

12. *Short titles*.—The modern plan of giving an Act a long title, and then inserting a clause that a certain combination of words may be used as the title instead, appears to be awkward and unnecessary. A brief title should simply be prefixed to every Act; and it is conceived that any words which refer to an Act in such a manner as plainly to identify it are a sufficient reference, without the assistance of any declaratory enactment. The uncouth form of most of these “Short Titles,” is also objectionable. Such combinations of words (for instance) as “The Metropolitan Improvement Repayment out of Consolidated Fund Act, 1853,” or “The Great Southern and Western Railway Ireland Extension Portarlinton to Tullamore Act, 1847,” are certainly very unlike pure English. Some further observations on the subject of short titles will be found at p. 26 of the First Report, and at p. 229 of the Third Report of the former Commission.

13. *Preambles*.—The only case in which a preamble ought to be prefixed to an Act is where a statement is necessary in order to make the meaning of the enactment intelligible; but it has become very common to insert preambles which contain, not a statement to render the enactment intelligible, but a statement of the reasons which make it necessary or expedient to pass the Bill. It is evident that these rea-

sons, however desirable it may be to present them to the Legislature during its deliberations, are only an incumbrance to the Act, as such. Such preambles should therefore be avoided by the draftsman, together with such superfluous recitals as that “it is expedient to alter the law,” &c.

14. *Commencement of Acts*.—Except in the few cases where Acts are passed to meet a sudden emergency, no Act ought to come in force till a fair time has elapsed after its passing, to allow the public to become acquainted with it. It would be convenient if there were two or four fixed days in the year on one of which all Acts shall come in force.

## PROPOSED NEW ARRANGEMENT OF THE STATUTES.

THE Statute Law Commissioners in their report make the following valuable observations and suggestions:—

The present arrangement of Acts in three series, styled “Public General,” “Local and Personal (Public),” and “Private,” appears both inconvenient and inaccurate.

It is submitted that all the Acts of the Session ought to be numbered in a single series, in the order in which they receive the Royal assent. The following are the considerations which seem to justify this proposal:

(1.) The classification now existing is, as regards the subject-matter of the Acts almost entirely arbitrary. Many Acts are included in the “Public General” series which are extremely limited and local in their application; while many Acts of far more public interest are included in the “Local and Personal” series. In fact, the division is not founded on the nature or subject of the Acts at all, but on the parties by whom the Bill is applied for, and the forms and rules of the House respecting their introduction. Taking the Acts of 1853, we find an Act to enable the Commissioners of Inland Revenue to sell the site of the Exchequer Office in Broad Street called “General,” while an Act respecting the Great Bedford Level is “Local;” an Act about the rights of common over Battersea Park “General,” and an Act relating to the improvement of the city of Westminster “Local;” an Act to empower the sheriff of Berwickshire to hold County Courts at Dunse “General,” and an Act regulating the Civil Court of Record of Liverpool “Local;” an Act about Westminster Bridge “General;” and Acts about bridges at Worcester and Rochester “Local,” and so on. The rules which govern the classification of Bills with respect to fees, proof of preamble before Select Committees, &c., are well known; but it is submitted that although there can be no objection to retain this classification as to Bills so long as they continue Bills, if it is found just and convenient, it need not be, and should not be, carried on into the arrangement of the complete Statutes.

(2.) The present classification creates and fosters an entirely unfounded notion that there is some difference as to authority and obligation between the different classes of Acts. Now the present classification is founded on no statutory authority, and though it must be admitted that it has been incidentally recognised in several recent Statutes, it is, strictly speaking, unknown to the law. There is, or was, a known distinction both as to construction and as to "judicial recognition" between public and private Acts; but this distinction, if not entirely abrogated, has no reference to the classification now in question, but only to the consideration whether the Acts are really public or private in respect of their subject matter. There is an intelligible distinction between laws which may be supposed to have been originated by the Legislature itself, and with reference to public considerations alone, and laws granted on the petition of private parties for their individual advantage (*privilegia*); in the latter case it is reasonable to construe the terms of enactment used by the Legislature, however absolutely expressed, not as the expression of its supreme will, but as the grant of the petition of the applicant, and contingent therefore on the truth and propriety of the applicant's representations, and thus admitting modifications not applicable to public Acts; but the modern threefold division of Acts cannot be reconciled with this distinction between public and private, many of the "Public General" being decidedly private in their nature, while some of the "Local and Personal" are public.

(3.) Another inconvenient result to the public of the present classification is, that in editions of the Statutes they get many "Public General" Statutes at full length which they do not want, while many of the "Local and Personal" which they are more likely to want, are omitted. It is true that this is a question of intelligent editorship; still editors think themselves to a great extent bound by the classification adopted by the Legislature. It is believed that far more useful editions of the Statutes would be published if the editors had to exercise their unfettered discretion as to printing at length or not in one single series.

There would be no difference in principle, and perhaps not much in bulk, between editions under the present and under the proposed system. The principle now is, and still would be, to print public Statutes at length, and of local and personal ones only the titles; but there would be this difference, that, under the proposed arrangement, the really public Acts would be printed, and the really local and personal ones omitted, which is not now the case.

The same observations apply to the rules as to the number of copies of Acts to be printed and circulated by the Queen's printers. With respect to these, it may be asked what rule is to be adopted if the present one is superseded? But the difficulty will be only that which must exist in every case where a selection is to be

made; and it cannot be doubted that a selection made by any person of ordinary intelligence would be more really useful than an arrangement which, with reference to the present question, is little better than arbitrary. To have such a selection made by a competent officer would only be to effect the object for which the present rules were recommended by the Committees of 1796 and 1801; namely, to insure that the publicity given to Acts should bear a due proportion to their importance.

(4.) The rules as to "judicial recognition," &c., under which the present division was instituted, no longer exist. The clauses which used to be added to local and personal Acts, declaring that they should be considered to be public Acts, or that copies of them printed by the Queen's printers should be evidence, have become superfluous since the 8 & 9 Vict. c. 113, s. 3, which enacts that "all copies of private and local and personal Acts of Parliament, not public Acts, if purporting to be printed by the Queen's printers, shall be admitted as evidence thereof by all Courts, &c., without any proof being given that such copies were so printed," and the 13 & 14 Vict. c. 21, s. 7, which enacts that henceforth every Act "shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act."<sup>1</sup>

The Queen's printers' edition of the Statutes (which has been very negligently superintended of late) continues to describe the "Local and Personal (Public)" series as "Acts declared public and to be judicially noticed," and the "Private" series as Acts "of which copies may be given in evidence;" but this is entirely inaccurate and inapplicable to the present state of things. The "Local and Personal (Public)" Acts do not now require, and seldom, if ever, contain any declaration that they are public and shall be judicially noticed, and they even occasionally contain a declaration that they

<sup>1</sup> These clauses seem to set the question as to judicial recognition on a reasonable and proper ground, for no one can seriously doubt that the Judges have the means of ascertaining satisfactorily what Acts have been passed; but there is still some uncertainty as to the effect of the latter enactment on the rules as to difference of construction between public and private Acts; for though the terms of the enactment seem ample enough, yet Vice-Chancellor Wigram, in *Dawson v. Paver* (5 Hare), said that the distinctions in construction between public and private Acts depended "on the nature and substance of the case," and were not affected by any technical considerations, "such as having the clause that the Act shall be deemed a public Act." See also *Guthrie v. Fish*, 3 B. & C.; and *The Trustees of the Birkenhead Docks v. The Birkenhead Dock Company*, before the Lords Justices, November, 1853. A doubt also occurs whether the rules as to pleading private Acts (if any) are affected.

shall not be public—for instance, the 14 & 15 Vict. c. cxxviii., relating to the estates of Trinity College, Dublin. And though the "Private" Acts do generally contain a declaration that a Queen's printers' copy shall be evidence, that declaration is now quite superfluous, and should not be made the foundation of any classification.

(5.) The present classification is also likely to create error and confusion in references to Acts, there being now in every Session three different Acts bearing the same number; and this objection becomes more serious now that the custom of referring to Acts by the number of the chapter only is becoming more common. The distinction attempted of marking one series with Arabic and another with Roman numerals is almost useless; it is almost sure to be lost in copying drafts of Bills, and even in the printed copies of Acts is so little attended to, that in the quarto edition printed by the Queen's printer the Public General Statutes are numbered in Arabic numerals in the running title, and in Roman numerals at the commencement of the chapters. Numerous instances have already occurred of Acts of the "Local and Personal" series being referred to in other Acts as if they belonged to the "Public General" series. Three instances will be found in the schedule to a single Act, the 14 & 15 Vict. c. 42 (see p. 203 of the Third Report of the late Commission). It is unnecessary to point out what serious consequences might result from the repeal of an Act of the Public General series, when one of the Local series was intended. Numbers are particularly liable to errors in copying and in the press; and even if the single series now proposed is adopted, it will be advisable to refer to the title of an Act, as well as to the year and chapter, in all important cases.

## NOTICES OF NEW BOOKS.

*The Law of Contracts.* By JOHN WILLIAM SMITH, Esq., late of the Inner Temple, Barrister-at-Law; Author of "Leading Cases," "A Treatise on Mercantile Law," &c. Second Edition. By JOHN GEORGE MALCOLM, Esq., of the Inner Temple, Barrister-at-Law. London: Stevens & Norton; H. Sweet; and W. Maxwell. 1855. Pp. 436.

It is unnecessary to do more than call the attention of our readers to this new edition of the late Mr. J. W. Smith's Lectures on the Law of Contracts, which were delivered in the Hall of the Incorporated Law Society. They have been very ably edited by Mr. Malcolm, and the statement of the law brought down to the present time after the manner of the original lectures.

This new edition contains the text of Mr. Smith, as first published, with such

alterations and additions as the changes in the law seemed to the Editor to require, incorporated in the body of the work; but distinguished from the original text by being inclosed in brackets. Amongst them are included several concise accounts of the cases quoted by Mr. Smith; with additions which seemed necessary, in order to supply examples of the rules enunciated, and in order to make the lectures, as printed, resemble those which were originally delivered by the Author.

The topics comprised in the several lectures are as follow:—

1. On the nature and classification of contracts, and on contracts by deed.
2. The nature of simple contracts; of written contracts.—The Statute of Frauds.
3. The Statute of Frauds.—Promises by executors and administrators.—Guarantees.—Marriage contracts.—Contracts for the sale of lands.—Agreements not to be performed in a year.
4. Sale of goods, &c., under the 17th section of the Statute of Frauds.—Consideration of contracts by deed, and of simple contracts.
5. Consideration of simple contracts. Executed considerations.—Where express requests and promises are of avail.—Moral considerations.—Illegal contracts.—Restraints of Trade.
6. Illegal contracts.—Fraud.—Usury.—Gaming and horse-racing.—Wagers.
7. Stock Jobbing Act.—The Lord's Day Act.—Simony.—Bills of exchange for illegal consideration.—Recovery of money paid on illegal contracts.
8. Parties to contracts.—Who are incompetent to contract.—Infants.—Wives.
9. Parties to contracts.—Insane persons.—Intoxicated persons.—Aliens.—Corporations.—Public companies.—The mode in which competent persons contract.—Agents.—Partners.
10. Principal and agent.—Their respective liabilities.—Agency of brokers.—Factors.—Partners and wives.—Recapitulation.—Remedies.—By action—Statutes of Limitation.

In the commencement of his discourses, the learned lecturer thus tersely states our Common Law Jurisdiction:—

"The whole practice of our English Courts of Common Law, if we except their criminal jurisdiction and their administration of the law of real property, of which it is not my intention to speak, to which may possibly be added those cases which fall within the fiscal jurisdiction peculiar to the Court of Exchequer, if we except these, the whole of the remaining subjects with which the jurisdiction of a Court of Common Law is conversant may be distributed into two classes, *Contracts* and *Torts*. Of this you can easily satisfy yourselves by putting to your own minds any conceivable case of legal inquiry. If it do not involve a question of criminal law, or of the title to land,



or of Exchequer jurisdiction, you will find that it resolves itself into a *contract* or a *tort*. Thus, suppose it to be the non-performance of a covenant, the non-payment of a bond, the dishonour of a bill of exchange, the non-payment of rent, the default of a surety,—these are all subjects of inquiry arising from contracts. So, again, if it involve an assault on the person, an injury to the reputation by libel or slander, a nuisance to the dwelling or the premises, a conversion of property,—these are only so many descriptions of torts. And as the subjects of legal inquiry divide themselves, so do the forms in which the inquiry is carried on; for all actions, as you are aware, are of *tort* or of *contract*, a division which, as you see, is rendered necessary by the very nature of things, and does not result from any arbitrary principle of arrangement.

"Now, therefore, the whole subject-matter of the inquiries about which our Courts of Law are conversant (excepting the cases I have excepted) being distributable into these two heads, *Contract* and *Tort*, I am about to take the former of them, that of *contract*, and state to you those principles of every-day recurrence which govern the law of England relative to contracts, and which it is absolutely necessary that every lawyer should bear constantly in mind, and have (to use the ordinary expression) at his fingers' ends, if he will avoid falling into egregious mistakes in the course of his daily practice."

Some curious cases are noticed relating to the right of a wife to enter into a contract where the husband is civilly dead, or is a foreigner belonging to a country with whom we are at war.

"In a word, the person who contracts with a married woman, as far as any right in a Court of Law is concerned, relies upon her bare word; for she is not recognised there as a person capable of binding herself by any contract whatever, save only in one or two excepted cases, which I will now specify.

"The first of these is where her husband is civilly dead: for instance, where he is under sentence of transportation. In such a case, to prevent her from contracting, would be to deprive her too of all civil rights, since the husband, being civilly dead, is no longer capable of contracting for her.<sup>1</sup> This is a very old doctrine, having been first established in the 2nd Hen. 4. In the Year Book of which year we find that Belknap the Lord High Treasurer was banished to Gascony till he should obtain the King's favour, and his wife, Lady Belknap, brought an action in the Common Pleas, which seems to have been the first instance of such a proceeding by a married woman; for it struck the lawyers of those days with so much surprise that they commemorated it by a Latin distich, which Lord Coke has

thought it worth his while to preserve in the 1st Institute. It is in the old monkish style, and is not only in Hexameter measure, but in rhyme also, the words are

"Ecco modo miram, quid femina fert breve Regis,  
Non neminando virum conjunctum robore legi."

"Another case is where the husband is a foreigner belonging to a country at war with Great Britain. In such case, as he cannot lawfully contract or sue in England, it seems to be admitted that his wife may do so as if she were unmarried.<sup>2</sup>

"By the custom of the City of London, a married woman is allowed to be a trader in her individual capacity, and may sue alone in the City Courts on contracts made by her in the course of such trade; but it would seem that, even in this case, if she were to bring an action in the Courts at Westminster, it would be necessary to make her husband a party to it. This subject is learnedly discussed in *Beard v. Webb*.<sup>3</sup>

## CONSTRUCTION OF STATUTES.

### EQUITY JURISDICTION IMPROVEMENT ACT.

#### CROSS-EXAMINATION OF DEPONENT TO AFFIDAVIT ON MOTION FOR INJUNCTION.

*Held*, that a witness who had made an affidavit on the occasion of a motion for an injunction, and which had been ordered to stand over with liberty to bring an action, might afterwards and before the trial be cross-examined under the 15 & 16 Vict. c. 86, s. 40. *Lloyd v. Whitty*, 19 Beav. 57.

#### ADMINISTRATION ORDER AT CHAMBERS WHERE RELEASE.

An order for administration was made against an executor in Chambers on the application of a residuary legatee, when it appeared that a release had been executed to the executor.

The Master of the Rolls said—"I am of opinion that this order was not properly made on summons. There being an existing release, it was necessary to file a bill or claim for the account, submitting, at the same time, the circumstances to show that this release was no bar.

"It would be impossible to deal with these cases, if the chief-clerk had authority on summons to set aside a release. The enactment (15 & 16 Vict. c. 86, s. 45) was intended to apply to a simple case of administration, al-

<sup>1</sup> *Espartero Franks*, 7 Bing. 762; *Marsh v. Hutchinson*, 2 B. & P. 231.

<sup>2</sup> *Bardes v. Keesenberg*, 2 M. & W. 61.

<sup>3</sup> 2 B. & P. 93.

though in the course of the prosecution of the order very difficult questions might arise; but here, the point is, whether any account whatever should be taken or not, and which involves the question whether the release is to be set aside. This is a matter to be decided in Court, and not upon summons in Chambers. As the matter now stands, I am of opinion that I ought to discharge the order, with liberty for the plaintiff to take such proceedings as he may be advised." *Acaster v. Anderson*, 19 Beav. 161.

## LAW OF ATTORNEYS AND SOLICITORS.

### COSTS OF MOTION FOR DELIVERY UP OF PAPERS ON PAYMENT OF BILL.

THE usual order had been obtained for the taxation of the bill of costs of a solicitor, and for the delivery up of papers upon payment. The costs were taxed and paid on August 1st, 1854, and on the day following a demand was made for the papers, and on noncompliance therewith, a notice of motion was given for the 1st day of Michaelmas Term for an order for their delivery. The motion stood over, and in the meanwhile before the hearing the papers were delivered.

On an application for the costs of the motion, the *Master of the Rolls* said—"I am of opinion that the client is entitled to all the costs. It is clear that the solicitor might have stopped the whole proceedings by delivering up the papers. I was surprised to find on inquiry at the Registrar's Office, on a former occasion, that according to the usual practice it required four orders to enforce the delivery of papers by a solicitor—1st, the order for taxation, which directs the delivery; 2ndly, the order to deliver within a specified time; 3rdly, the four-day order, or in default stand committed; and lastly, the order for committal. I do not know the reason for the practice, and there seem to me to be more orders than are necessary. However, this is clear, that the respondent is in the wrong and must pay the costs. *In re Minter*, 19 Beav. 33.

## LAW OF COSTS.

### OF MOTION BEFORE MASTER OF ROLLS TO DISCHARGE VICE-CHANCELLOR'S ORDER.

NOTICE of motion to discharge an order in a cause attached to the Court of one of the Vice-Chancellors was irregularly given before

the Master of the Rolls: *Held*, that the Master of the Rolls had jurisdiction to award costs, and two counsel having been instructed by the respondents in such a case, 42s. costs were summarily given. *Yearsley v. Yearsley*, 19 Beav. 1.

### UNDER GAOL ACT.—OF PARTY UNNECESSARILY APPEARING.

The costs of payment out of Court of money paid in under the 4-Geo. 4, c. 64, s. 67 (Gaol Act) being the purchase money of lands taken by justices of the peace under ss. 45, 46, were ordered to be paid by the corporation of a borough, who, under the Municipal Corporations' Act represented the justices by whom the lands were taken.

A party who from the heading of the account was properly served with a petition, but whose appearance was unnecessary, refused his costs. *In re Justices of Coventry*, 19 Beav. 158.

### COSTS OF MORTGAGEE DEFENDANT ADDED TO MORTGAGE DEBT.

ON the recent case of *Scurrah v. Scurrah* coming before the Master of the Rolls for further directions, an order was made for the balance found due from the plaintiff and defendant, S. Scurrah, jointly, to be paid into Court,—to tax the costs of all parties,—and to pay costs when taxed (except those of defendant Tanewell, the mortgagee,) and his costs to be added to his mortgage debt, &c. As respects his Honour's decision on the subject of costs, it was decreed, as above stated, that the plaintiff's and all the defendant's costs were to be taxed and paid out of funds in the hands of the receiver; but, as to one of the defendants, a mortgagee, it was ordered that his costs should be added to his mortgage debt. It is on this part of his Honour's judgment I wish to make a few remarks.

And first, as to the mortgagee being a party to the proceedings in Chancery. This did not arise from any act of his, but solely through the misunderstanding of the other parties, who quarrelled about their respective rights as co-administrators of a personal estate. It appeared by the Master's report, that a considerable part of the mortgage money had been expended in putting the property into repair, which had for a long time been uninhabitable, and was liable to be forfeited (it being leasehold) to the lessor for breach of covenants—that the security was an inadequate one for principal, and a long accrual of interest was found also by the Master to be due—and to add any further sum by way of lien was adding to the mortgagee's loss, the mortgagee being so needy, as must have appeared to the Court by

their having borrowed money chiefly to put the property in repair. It is not a sufficient answer to say that a mortgagee should take care that his security is in the first instance, not only a sufficient one for money then advanced, but for any addition by way of charges for costs; for if a mortgagee had the remotest idea, when lending his money, that he was afterwards to participate in the blessings of a Chancery suit, I apprehend few persons would be found disposed to disturb their funds from the quiet regularity of the consols for the uncertain addition of 2l. per cent. with the prospect of their principal money being engulfed with costs.

The principle of this decision, if adopted, must of necessity operate most injuriously to the party in question, and, if followed, inevitably operate as a most serious evil and injustice to others similarly circumstanced.

In this case, as in others of daily occurrence, money is advanced to meet some pressing emergency on the agreement that it should be repaid at a given period; and if prolonged beyond the time fixed, and (as in this case) the security be a term of years, it gradually becomes of decreasing value, and will not bear any addition to the principal money either by accumulation of interest or by way of costs,—more particularly when incurred by quarrels over which the mortgagee has no controul, or to which he had in the remotest way been a party.

I trust I have shown enough to prove the want of equity, and pointed out how dangerous, as a precedent, it would be to act on this decision, and which by the reported cases bearing on the subject, appears to have been in opposition to all previous decisions.

As to the right of the administrators to be repaid moneys properly paid for the benefit of the estate—See *Baleh v. Hyam*, 2 P. Wms. 455; *Quarrell v. Beckford*, 1 Madd. 282; *Attorney-General v. Corporation of Norwich*, 2 M. & C. 424. As to the mortgagee's rights to receive the mortgagor's costs, see *Greedy v. Lavender*, 11 Beav. 417.

J. T.

## SATURDAY HALF-HOLIDAY.

IN Mr. J. R. Taylor's pamphlet on this subject are the following suggestions made by solicitors.

The first is by Mr. Charles James Palmer, of the firm of Palmer, Palmer, and Bull:—

"The first step to be taken towards the above desirable event is to alter the hours of attendance at the public offices. I would propose that the offices open at ten and close at four o'clock throughout the year, except on Saturdays, and between the 10th August and 24th October. On Saturdays they should close at one o'clock, and between the 10th August and 24th October at two o'clock, or

perhaps one o'clock would do. From ten till four are the usual hours of attendance at most of the public offices and institutions (apart from the law offices), and I cannot see why those hours should not be adapted to the law offices. If the Courts should find it necessary to sit after two o'clock on Saturdays, those attorneys and others who have business in Court, must, of course, be in attendance; but I cannot see why the few should prevent the working of the half-holiday as a general rule. Of course that general rule, like all others, must have exceptions; indeed, I feel the impossibility of avoiding the exception, either as regards masters or clerks in agency offices during the circuits; but at other periods I think the half-holiday would work well—at all events it would be a relief to all of us to know that by custom we might take the Saturday afternoon for recreation, without the risk of being accused of neglecting our business. The hours of service of pleadings, notices, &c., should also be altered, and I would propose that on Saturdays no service should be deemed to be good (except for the following Monday) after two o'clock, and on other days after five o'clock, except for the following day. If we could obtain a rule of Court, altering the hours as I have above suggested, I think the half-holiday system would work itself in a short time, excepting during the periods of heavy pressure—such as the circuits—which I have before said must, under any circumstances, form an exception to the rule, for I am certain that to lay down a positive rule to 'strike' at any fixed hour on a Saturday would be impracticable."

The second is from Mr. G. B. Gregory, of the firm of Gregory, Gregory, Skirrow, and Rowcliffe:—

"I have no hesitation in stating that you are perfectly correct in assuming that I am desirous to secure a half-holiday on Saturday to every member of the Legal Profession.

"It certainly appears to me that the best course to obtain this would be for the Courts of Law and Equity to abstain from sitting altogether on the Saturday. I do not think that, considering the daily labours of the Judges, the public, or the suitors, could have any reason to complain of this arrangement; and it would afford a most desirable opportunity for the Judges themselves to consider, not only the cases argued and pending before them, but also improvements from time to time in the general practice and proceedings of their Courts.

"I think it would be most desirable for the Legal Profession to assist in any general movement which may be commenced for securing a general half-holiday on Saturday, and that a public meeting of all persons interested in promoting it, of all professions or trades, would tend very much to promote the object in view."

# METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

## ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

April 18th, 1855.

*State of the Association.*—The Annual Report of the Committee may be conveniently given under two heads, one of which will include all that relates to the organization of the Association itself, and the condition of the Profession; while the other will include the operations of the Committee, in relation to the law, and its administration.

The Committee begin, as in their previous reports, with the former head, and they are glad to enumerate the following important additions to their own list:—In London, Mr. J. Bridges, of the firm of Bridges, Mason, and Bridges, and Mr. J. Anderton. In the provinces, the additions comprise the following gentlemen:—Mr. J. W. Unett, of Birmingham; Mr. T. Wilkinson and Mr. H. T. Sankey, of Canterbury; Mr. Somers Clarke, Mr. H. Verrall, Mr. W. J. Williams, and Mr. W. Kennett, of Brighton; Mr. R. Raper, of Chichester; Mr. J. Howard, of Portsmouth; Mr. W. Minchin, of Portsea; Mr. R. R. Wilkinson, of Gosport; and Mr. J. Atkinson, of Leeds.

*Aggregate Meeting at Leeds.*—In their report last year the Committee announced that an aggregate meeting would be held at Leeds in October; and that the Leeds Law Society had undertaken to make all the necessary local arrangements. The meeting was, accordingly, held on the 18th of October, at the Hall of the Philosophical Institute, Leeds. The Deputation from London consisted of Mr. E. S. Bailey, the Chairman of the Committee, Mr. E. W. Field, Mr. E. Benham, and the Secretary. The following towns and places were also represented:—Newcastle, Sunderland, Lancaster, Liverpool, Manchester, Hull, York, Birmingham, Wrexham, Lincoln, Horncastle, Wakefield, Bradford, and Kent. Letters were also received from members at Selby, Northampton, Stockton, and Shrewsbury, who were, at the last moment, prevented from attending.

The meeting was about as numerous as that held at Derby, and quite as influential in its character. After an address from the Chairman, Mr. Bailey, the following resolutions were unanimously adopted:—

1. Proposed by Mr. Field, of London; seconded by Mr. Payne, of Leeds:—

“That for the purpose of carefully considering every projected alteration in the law, as well as to maintain the rights, and increase the usefulness of the Profession, it is important that the attorneys and solicitors throughout the kingdom should form a united body.”

2. Proposed by Mr. Payne, of Liverpool; seconded by Mr. Moss, of Hull:

“That although these objects have, to some degree, been obtained by means of the various local law associations throughout the country,

yet it is only by such an organization as that of the Metropolitan and Provincial Law Association that they can be effectually secured.”

3. Proposed by Mr. Hodgson, of York; seconded by Mr. Ryland, of Birmingham:—

“That this meeting, therefore, pledges itself to support the Metropolitan and Provincial Law Association by every means in its power; for the purpose of placing it on such a footing as shall enable it to act with efficiency.”

4. Proposed by Mr. Shaw, of Leeds; seconded by Mr. Case, of Maidstone:—

“That attorneys and solicitors having been made the subject of systematic attacks by a portion of the press, it is important that the public mind should be disabused through the same channel; and that for this purpose this Society calls upon the Profession to afford them increased support.”

5. Proposed by Mr. Beever, of Manchester; seconded by Mr. Lewis, of Wrexham:—

“That this meeting is glad to recognise the efforts which have been made by the Incorporated Law Society to improve the educational test of attorneys and solicitors; but they earnestly trust that further steps may be speedily taken to secure for the Profession a higher standard of general education.”

6. Proposed by Mr. Barr, of Leeds; seconded by Mr. Burn, of Sunderland:—

“That the cordial thanks of this meeting be given to the Chairman for his excellent services in the chair this day, and for his constant and zealous devotion to the interests and honour of the Profession generally.”

After the meeting, those gentlemen who were able to remain dined together at the White Horse Hotel.

A suggestion was made at the meeting, by Mr. Ryland, of Birmingham, which met with general approval, that the meetings should, in future, be annual; and should comprise the reading and discussion of papers, previously prepared, on professional subjects; and Mr. Unett, of Birmingham, invited the Committee to hold their next meeting at Birmingham, where he promised them a hospitable welcome. The meeting was well reported in the three local papers; one of which was sent to every member of the Association.

Mr. Ryland's suggestion has been since carefully considered by the Committee, who have come to the conclusion, that such meetings would, if well supported, be of great service, not only to the Association, but to the Profession generally; and that it will be right, at all events, to try practically whether they can be made sufficiently interesting to command success. The Committee have, therefore, prepared the following resolutions, which they recommend for the adoption at this meeting:—

“That a meeting of the Association shall for the future be held in the month of October in every year.

“The proceedings to be as follow:—

“1. That the Chairman or Deputy-Chairman of the Committee, if present, be the Chair-

man of the meeting; otherwise that the Chairman be appointed by the meeting.

"2. That the proceedings shall commence with an address from the Chairman, and shall comprise a review of the proceedings of the Committee during the past year.

"3. That the time and place of the next meeting shall be fixed.

"4. That this be followed by the reading of papers by members of the Society upon subjects connected with the Profession.

"5. That no paper shall occupy more than half an hour in its reading.

"6. That after the reading of each paper by its author, if present, and if not, then by the secretary, it shall be discussed by the members present, if they be so minded, before another paper is introduced to the meeting; and that each discussion shall be closed when so directed by the Chairman.

"7. That every member desiring to communicate a paper to the meeting, shall inform the secretary of its title four weeks, and deliver the paper to the Secretary one week, prior to the meeting.

"8. That the Committee shall decide the order in which papers shall be taken; and the secretary shall send to every member of the Association, with the circular convening the meeting, a list of the titles of the papers proposed to be read.

"9. That the Committee shall have the power, with the consent of the author, to print and circulate such of the papers, or such extracts, as they see fit.

"10. That whenever it may appear to the members at any meeting that any subject demands the especial attention of the Profession, some members or member shall be then and there appointed to collect and arrange such facts and opinions as may be necessary or useful for the elucidation of the subject; and to report thereon to the Committee."

The Committee are well aware that these meetings must be to some extent experimental, and that they will not answer unless it shall appear that they meet the wishes of a considerable portion, at any rate, of the Profession; they feel convinced, however, that, provided they are well supported, they will be of much service to the whole Profession; and they therefore recommend the Association to make the experiment; and trust that the members generally will feel it to be no ungrateful duty to aid in rendering the meetings at once interesting and useful.

*Local meetings.*—In addition to the meeting at Leeds, the secretary attended, during the Vacation, local meetings at Canterbury, Maidstone, Hastings, Brighton, Chichester, Portsmouth, and Southampton, and he also visited and canvassed the towns of Tonbridge, Tonbridge Wells, and Dover. On the whole, the result of the tour was satisfactory; although it still appears to be the minority only who are impressed with the necessity of uniting the scattered members of the Profession for the purpose of communication.

At Southampton, a Committee was formed for the purpose of founding a Hampshire Law Society, with an annual subscription of two guineas—one to be retained for local purposes, and one to be contributed to this Association.

*Circular No. V.*—Although the Committee have still to regret the want of an adequate organ in the press—a want which, as they have already frequently stated, can only be supplied by a fund much more considerable than any that has yet been within their command, they have done what they could to remedy this want by again printing for the use of their members a circular, containing a short account of the legislation for the year. This Circular has been found useful, and at Leeds many members spoke of it as having been of much service to them.

*Malpractice.*—One painful case of malpractice on the part of a member of the Association has engaged the attention of the Committee, who have felt it necessary to act upon the power vested in them by the 6th law of the Association to erase the Member's name from the list.

*Legal Education.*—The Committee have again urged upon the attention of the Council of the Incorporated Law Society the important subject of Legal education; reminding them that a large number of communications from the principal Law Societies in the kingdom have now been lying before them since February, 1853. The Committee were informed in January that their letter had been referred to a Special Sub-Committee, who they have recently learned have made a report, which, it is hoped, will be adopted, and thus lead to the desired results.

The Committee pass now to their operations in respect to the law and its administration; and here it will be observed that the number of Law Bills which have been introduced into Parliament is not nearly as large as the number at the same period of the last two years, although enough has yet been done to call for constant attention on the part of the Committee.

*Trust Societies.*—Of the two Bills which were introduced into Parliament last Session to enable joint-stock companies to undertake the management of trusts, and both of which were ultimately rejected, only one has reappeared this Session; the South Sea Company having abandoned all idea of any reconstitution of their body for active purposes. The proposed Executor and Trustee Society, however, have again applied for an act of incorporation; and the Committee have written to several members of both Houses of Parliament, calling their attention to the strong objections to which they think the principle of the Bill is liable. The Committee conceive that especially upon a question affecting a private Bill, such letters are more likely to prove an effective opposition than petitions, unless followed up by the expensive measure of appearing by counsel against the Bill when it is in Committee. Such a step the Committee

have not the means of adopting, and they hope that the vigorous opposition to the Bill of last Session, by the Incorporated Society, and the evidence then adduced by them before the Committee on the Bill, will have the effect of preventing the present Bill from passing into a law.

**Ecclesiastical reform.**—The Committee had hoped to be able before now to congratulate the Profession upon the accomplishment of at any rate an instalment of the long-promised reform of the Ecclesiastical Courts. In this, however, they have been disappointed. The Testamentary Jurisdiction Bill, which was last year introduced to the House of Lords by the Lord Chancellor, and passed by their lordships, was brought down to the House of Commons on the 11th of April; it was read a first time on the 1st of May, and the second reading appointed for the 5th of May; that appointment was, however, deferred six times, and ultimately, on the 7th of July, the Bill was withdrawn. That Bill appeared to the Committee, on the whole, to embody the leading principles essential to a satisfactory amendment of the law in relation to matters of testacy and intestacy. At the same time there were provisions which appeared objectionable, and upon those the Committee presented a petition.

The Committee suggested that the Country Commissioners to administer oaths in Chancery, who have all been selected by the Lord Chancellor from among the general body of solicitors, form a staff of officers who are eminently qualified to discharge all the duties of provincial officers of the Court of Probate. This suggestion has been adopted by the Solicitor-General in the Bill he has introduced this Session.

The Bill proposed to provide as compensation to the proctors a monopoly of all testamentary business for a period of ten years.

Such a compensation would, in every point of view, have been unsatisfactory. Many proctors, residing in towns where no local registry was contemplated, would have been deprived of all compensation. On the other hand, in some dioceses, as in Norwich, the registrar alone has hitherto acted in common form business; and in such cases the proctors would, upon no perceivable ground whatever, for the first time, have obtained a monopoly of an important branch of Law business. Some other points in the Bill were also pointed out by the Committee as requiring amendment.

**Common Law.**—The amendments introduced by the Common Law Procedure Act of 1852, were carried further last Session by the "Act for the further amendment of the Process, Practice, and Mode of Pleading in, and enlarging the Jurisdiction of, the Superior Courts of Common Law at Westminster, and the Superior Courts of Common Law of the counties Palatine of Lancaster and Durham."

The Committee approved of the general scope of this measure, and they accordingly presented a petition in its favour. At the

same time, however, they felt bound to point out certain provisions which they did not think would practically work well.

They did not approve of the power to appoint two Nisi Prius Courts to sit at the same time for the purpose of more speedily disposing of the cause list. They anticipated, and it has so proved, that this measure would considerably increase the trouble and responsibility already weighing upon solicitors in securing the attendance of counsel. Undoubtedly, it is a great evil that parties and witnesses should be kept in attendance for a long series of days, not knowing when their cause is to come on; but this evil should be met, not by crowding a greater amount of business into each of the days over which the sittings now extend, but by having for each day, at any rate in London, a fixed cause list of reasonable length, and then, if necessary, extending the days of sitting, or increasing the number of sittings.

The Committee further pointed out that the proceedings now allowed against a garnishee, give a plaintiff a much more summary remedy against him than even against the defendant himself; and they suggested that the Judge should have power to give the garnishee reasonable time for payment upon cause shown. They also remarked that a defendant, if an agent for other parties, may have money at his bankers', none of which actually belongs to him, but which, nevertheless, could be attached by his creditors in the hands of the bankers.

Upon these and some other minor points the Committee are still of opinion, that the Common Law Procedure will require further amendment. On the whole, however, they must congratulate the Profession upon the great improvements that the two Common Law Procedure Acts have introduced into the practice of the Superior Courts.

[To be continued.]

## BARRISTERS CALLED.

Easter Term, 1855.

LINCOLN'S INN.

April 30.

Charles Foster, Esq.  
John Gustave Adolphus Bones, Esq.  
Charles Cecil Trevor, Esq.  
Alfred Hayman Louis, Esq.  
Francis Alfred Bedwell, Esq.  
Francis Gregory Haviland, Esq.  
Charles Buxton Musgrave, Esq.  
Norman Macleod Barrers, Esq.  
Leonard Benton Seeley, Esq.  
Henry Smith, Esq.  
Francis George Minningham Baileu, Esq.  
Lawrence Oliphant, Esq.

## INNER TEMPLE.

April 30.

John Simmonds, Esq., M.A.  
 John Richard Eaton, Esq., B.A.  
 Charles Henry Alderson, Esq., B.A.  
 William Cayley Worsley, Esq.  
 William Downes Griffith, Esq., B.A.  
 Charles John Clay, Esq., B.A.  
 Robert Albion Pritchard, Esq., B.C.L.  
 Thomas William Daniel, Esq., B.A.

## MIDDLE TEMPLE.

April 30.

Charles Boulnois, Esq., LL.B.  
 Fitzgerald Lockhart Ross Murray, Esq.  
 Robert Miller, Esq.  
 Robert Scott, Esq.  
 John Martin, Esq.

## GRAY'S INN.

April 30.

Charles Robertson Griffiths, Esq.  
 John Rodham Carr, Esq., LL.D.

## INNS OF COURT.

Trinity Term, 1855.

## PUBLIC EXAMINATION OF STUDENTS.

Held at Lincoln's Inn Hall, on the 18th, 19th,  
 and 21st Days of May, 1855.

THE Council of Legal Education have  
 awarded to—

John P. O'Hara, Esq., Student of Gray's  
 Inn, a Studentship of Fifty Guineas per  
 Annum, to continue for a period of Three  
 Years.

Charles A. Holmes, Esq., Student of the  
 Inner Temple, a Certificate of Honour of the  
 First Class.

John Pym Yeatman, Esq., Student of Lincoln's  
 Inn; Charles Fitzwilliam Cadiz, Esq., Student  
 of Lincoln's Inn; Edward Dundas Holroyd,  
 Esq., Student of Gray's Inn; Samuel Bruce,  
 Esq., Student of the Middle Temple; Andrew  
 Steinmetz, Esq., Student of the Middle Temple;  
 Edward Howley, Esq., Student of the Middle  
 Temple; Frederick Hyman Lewis, Esq., Stu-

dent of the Inner Temple; Henry Ratherford,  
 Esq., Student of the Middle Temple; W. Al-  
 gernon Slade Gully, Esq., Student of the  
 Inner Temple; William Patchett, Esq., Stu-  
 dent of the Inner Temple; and Henry Con-  
 ington, Esq., Student of Lincoln's Inn, Certifi-  
 cates that they have satisfactorily passed a  
 Public Examination.

By Order of the Council,  
 (Signed) EDWARD RYAN,  
 Chairman, pro tem.

## NOTES OF THE WEEK.

BILLS OF EXCHANGE AND PROMISSORY  
NOTES BILL.

THE Committee of the whole House on  
 this Bill has been fixed for Monday, the 4th  
 June; but so many other measures have been  
 appointed for the same day, that we question  
 whether the Bills of Exchange Bill can be  
 brought on. We hear grave doubts of the  
 public benefit of this alteration of the Law,  
 and it is anticipated that it will lead to an in-  
 creased number of insolvencies and bank-  
 ruptcies. These changes, which materially  
 affect trade and commerce, should be carefully  
 considered before they are adopted.

There can be no doubt, however, that the  
 choice of the Select Committee has been judi-  
 ciously made in favour of Mr. Keating's Bill,  
 if one of the two must pass.

NOTICE OF APPLICATIONS TO A JUDGE AT  
CHAMBERS, TO TAKE OUT OR RENEW  
CERTIFICATES,

On 13th June, 1855.

Parker, William, Westbourne Grove, Pad-  
 dington; Devereux Court, Bentinck Street.  
 Ram, Stephen Adye, Bartholomew Place,  
 Kentish Town.

Watson, Robert William Gifford, Stoke Da-  
 merel, Devon.

## LAW APPOINTMENT.

Mr. Loftus Leigh Pemberton has been ap-  
 pointed to the vacancy in the Registrars' Office  
 in Chancery.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

Lord Kensington v. Bowerie. May 28, 1855.

SETTLEMENT.—CHARGE BY TENANT FOR  
 LIFE.—PAYMENT OF INTEREST.—AC-  
 COUNTS OF DEFICIENCY.

The tenant for life, under a settlement, was

empowered to charge the settled estates with  
 20,000*l.*, and interest at 5 per cent. for his  
 own benefit, and to create a term to secure  
 it. It appeared that the rents and profits  
 were insufficient to pay the interest on such  
 20,000*l.*, and the tenant for life accord-  
 ingly paid the deficiency out of his own

*moneys: Held, reversing the decision of the Master of the Rolls, that his representatives were entitled as against the succeeding tenant for life to charge such interest paid on the inheritance, and that an account thereof must be taken from the date of the charge, and not from the death of the tenant for life.*

THIS was an appeal from the decision of the Master of the Rolls (reported 19 Beav. 39). It appeared that by a settlement dated October 13, 1833, and made on the marriage of Lord Kensington, the Kensington estates were settled, subject to a mortgage for 60,000*l.* held by Lord Braybrooke and others, on the late Lord Kensington for life, with remainder to the plaintiff for life, and a power was given to the late Lord Kensington to charge the estates with 20,000*l.*, and interest at 5*l.* per cent. for his own benefit, and to create a term to secure it. It was also provided that so much of the 20,000*l.* as should not have been raised by mortgage of the term, during the lifetime of the late Lord Kensington, should on his death, as between his representatives and the parties entitled under the settlement sink into the inheritance. The late Lord Kensington by deed, dated February 5, 1835, charged the estates accordingly with 20,000*l.* and interest at 5 per cent. from that date, and created a term of 1,500 to secure the charge, redeemable on payment of principal and interest. He afterwards mortgaged this charge with property of his own to secure the several sums of 24,500*l.*, 32,500*l.*, and 23,000*l.* to several parties. Upon his death, on Aug. 18, 1851, the plaintiff, who became tenant for life, filed this bill to redeem on payment of the 20,000*l.* By the decree made on March 1, 1854, directing accounts and inquiries, the chief clerk took an account of the interest on the 20,000*l.* only, from the death of the late lord, and the rents and profits were found to be sufficient to keep down the interest on the 60,000*l.* but not on the 20,000*l.*, and he accordingly paid the deficiency out of his own moneys, and an application was made for an inquiry as to the excess of such interest paid by the late lord, and for the same to be charged on the inheritance as part of the mortgage security. The Master of the Rolls having, on December 5th last, refused the application on the ground that the account could only be taken from the death of the tenant for life, this appeal was presented.

*Solicitor-General, Lloyd, R. Palmer, Selwyn, Shapter, Freeling, Southgate, and Micklethwaite* for the several parties.

*Cur. ad. vult.*

The Lords Justices said, that the representatives of the late tenant for life were entitled as against the remainder man to a charge on the estate for the sums paid by their testator in his lifetime for interest, in respect of which the rents and profits were insufficient. The accounts must therefore be taken from the period of the charge, and not from the death of the tenant for life, and the decree of the Court below would be varied accordingly.

## Master of the Rolls.

Gerrard v. Butler. May 26, 1855.

SETTLEMENT.—PORTIONS FOR YOUNGER CHILDREN.—APPOINTMENT.—VOID DIRECTION.

*A fund was settled under a marriage settlement for portions for younger children, of which there were afterwards six. On the marriage of one, the settlor and his wife appointed one-sixth in her favour, and directed that it should be held on the same trusts as were declared in favour of her husband, herself, and their children successively: On the daughter's death, held that her representative took the fund, and that the direction was void.*

By a settlement, on the marriage of Mr. and Mrs. Fowler, certain estates were charged with 3,000*l.* for portions for younger children, and a sum of 2,000*l.* was also settled on the like trusts. It appeared that there were six younger children, and that on the marriage of one of them, Elizabeth, with Mr. Gerrard, Mr. and Mrs. Fowler appointed one-sixth of the fund for portion to her, and directed it should be held on the same trusts as were declared in favour of Mr. Gerrard, herself, and their children successively. This claim was filed on her death by the plaintiff as her legal personal representative claiming to be absolutely entitled to the fund appointed.

*Roupeell and Wynne* in support; *Cary* for Mrs. Fowler, contra; *Osborne and Biron* for other defendants.

The Master of the Rolls said, that there was an absolute appointment to Elizabeth, and that the direction was void, and that the plaintiff was accordingly entitled.

## Vice-Chancellor Stuart.

Roberts v. Ball. May 26, 1855.

ATTACHING DEBTOR FOR CONTEMPT ON NONPAYMENT OF MONEY.

*Held, that the 1 & 2 Vict. c. 110, s. 16, does not apply to the case of a debtor taken in execution under an attachment for contempt for nonpayment of money ordered to be paid under a decree.*

It appeared in this case that a decree had been made for the payment of money and that on its nonpayment the debtor had been taken in execution under an attachment for contempt.

The question now raised on this petition was, whether the case came within the 1 & 2 Vict. c. 110, s. 16, which enacts, that "if any judgment creditor, who under the powers of this Act shall have obtained any charge or be entitled to the benefit of any security whatsoever, shall afterwards and before the property so charged or secured shall have been converted into money or realised, and the produce thereof applied towards payment of the judgment debt, cause the person of the judgment debtor to be taken or charged in execution upon such judgment, then and in such



case such judgment creditor shall be deemed and taken to have relinquished all right and title to the benefit of such charge or security and shall forfeit the same accordingly."

*Malins, Baggally, White, and Brown*, for the several parties.

The *Vice-Chancellor* held, that the section did not apply.

#### Court of Queen's Bench

*Regina v. Fuller.* May 26, 1855.

**MOOR-RATE.—RATEABILITY OF ADJUTANT OF MILITIA, KEEPING REGIMENT STORES IN HOUSE.**

*The adjutant of a militia regiment resided in a house with his wife and family, but kept there the arms and accoutrements of the regiment: Held, that he was not rateable.*

*The adjoining stable and coach-house were let to a veterinary surgeon, not connected with the regiment, held, such premises were liable to be rated.*

There was an appeal from a pro-rate on the adjutant of the West Sussex Militia, in respect of a house in which he resided with his wife and family, but where he kept the arms and accoutrements of the regiment. The stable and coach-house adjoining was let to a veterinary surgeon, not connected with the regiment.

*Willes* in support of the rate; *J. J. Johnson and Corner*, contra.

The *Court* said, that either the defendant or the veterinary surgeon ought to be rated in respect of the coach-house and stable, but that the premises occupied by the defendant, and in which the stores were kept, were exempted from liability, under the 43 Eliz. c. 2, as being used for the purposes of the Crown and the public, and the rate in that respect would be quashed.

#### Court of Common Pleas.

*George v. Somers.* May 28, 1855.

**COMMITMENT ON COUNTY COURT JUDGMENT SUMMONS, AFTER DISCHARGED AS INSOLVENT.**

*After a judgment in a County Court, the defendant was arrested at the suit of another creditor and obtained his discharge under the 1 & 2 Vict. c. 110, having inserted the County Court judgment debt in his schedule: Held, that he was nevertheless liable to be committed on a judgment summons under the 9 & 10 Vict. c. 95.*

There was a motion for a rule nisi on the Judge of the Rochester County Court and the plaintiff in a plaint issued in such Court, to show cause why the defendant should not be discharged out of custody. It appeared that an order had been made for the immediate payment of the debt for which the plaint issued, but that on the defendant's subsequent arrest by another creditor he petitioned the Insolvent

Debtors' Court, including the judgment debt in his schedule, and was discharged. He afterwards was committed on a judgment summons for 40 days by the County Court Judge.

*Francis* in support, referred to the 1 & 2 Vict. c. 110, s. 90, which enacts, that "no person who shall have become entitled to the benefit of this Act by any such adjudication as aforesaid, shall at any time thereafter be imprisoned by reason of the judgment as aforesaid entered up against him or her, according to this Act, or for or by reason of any debt or sum of money or costs with respect to which such person shall have become so entitled, or for or by reason of any judgment decree or order for payment of the same; but that upon every arrest or detainer in prison upon any such judgment, as entered up as aforesaid, or for or by reason of any such debt or sum of money or costs, or judgment decree or order for payment of the same, it shall be lawful for any Judge of the Court from which any process shall have issued in respect thereof, and such Judge is hereby required, upon proof made to his satisfaction, that the same of such arrest or detainer is such as hereinbefore mentioned to release such prisoner from custody, unless it shall appear to such Judge upon inquiry that such adjudication as aforesaid was made without due notice." &c.

The *Court* said, that there was no ground for impeaching the decision in *Abley v. Dale*, 11 C. B. 378, and refused the rule accordingly.

#### Court of Eschequer.

*Attorney-General v. Robinson and others.* May 25, 1855.

**COMPROMISE OF INFORMATION BY OTHERS.—COSTS OF PROSECUTION.**

*On the trial of an information by the Attorney-General, at the instance of the Commissioners of Customs, to recover 53,000l. penalties, a compromise was come to by consent, and a verdict for 1,000l. entered for the Crown, but no mention was made as to the costs of prosecution: Held, that a rule could not be, under such circumstances, granted to stay the taxation of the costs, although the 1,000l. had been duly paid.*

There was a motion for a rule nisi to stay the taxation of the costs of this information by the Attorney-General, at the instance of the Commissioners of Customs, as against the defendant Robinson. It appeared that the information sought to recover penalties to the amount of 53,000l., but that on the trial a verdict for 1,000l. was taken for the Crown by consent, which had been duly paid.

*Wordsworth* in support.

The *Court* said, that as it was not stated when the compromise was effected, that the 1,000l. was to include the costs of the prosecution, the rule must be refused.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attended at your service.”—*Subscriptor.*

SATURDAY, JUNE 9, 1855.

### PROGRESS OF LAW BILLS IN PARLIAMENT.

It will be convenient in this part of our journal, from time to time, to give a brief summary of the debates which have taken place in Parliament, on the subject of the several Bills relating to the Law, or affecting the interests of the Profession, and to notice the progress made therein. There are several measures, of more or less importance, which have already made considerable advances—some indeed have been sanctioned by one of the Houses of Parliament. Nearly four out of the usual six months devoted to the legislative sittings have passed away; but during the time that remains much may be accomplished for good or evil, and it behoves all who are interested in sound and safe legislation to be watchful at each stage of the several measures that remain for consideration in either House.

No less than six Bills stood for consideration on the 4th instant, the three most important of which were postponed in consequence of the debate on the Affairs of the War with Russia. These were—the Testamentary Jurisdiction Bill, the adjourned debate on the second reading of which has been postponed till Tuesday the 12th of June;—the Bills of Exchange and Promissory Notes Bill, the Committee on which has been postponed till Friday the 8th;—and the Despatch of Business in Chancery Bill, the Committee on which was postponed till Thursday the 7th.

With regard to the Testamentary Jurisdiction Bill, it is observable that a considerable difference of opinion prevails amongst the Solicitors in London regarding the expediency of entirely throwing open

the business of Doctors' Commons to the Profession at large, and abolishing the Ecclesiastical Courts. Petitions have been signed numerously on both sides of the question. We believe the majority are in favour of the abolition. But, besides this difference of opinion, there are difficulties to be considered on the important question of *compensation* to the practitioners both in town and country, and on the practical details of a change of jurisdiction and mode of procedure. It is not improbable that the Bill will be referred to a Select Committee of the House of Commons for the purpose of taking evidence and investigating the Government plan.

We mentioned some few weeks ago, that the proctors admitted that important alterations were needed in the constitution and practice of their Courts, and they were prepared with a plan of reform to meet the objections of their opponents;—to let in the Solicitors to practise in contentious suits; and to allow them a share in the emoluments of business which they introduced to the proctors, according to the arrangements existing between country solicitors and their London agents. We are not aware whether this plan is approved by the proctors generally; at present we cannot learn that it has been suggested to the proper authorities, and we believe it has not yet been communicated in any official form to the Incorporated Law Society, who may be considered as representing the solicitors.

On the subject of the Bills of Exchange and Promissory Notes Bill, we understand that the bankers and bill brokers in the city are urgently in favour of some alteration in the law which will accelerate the recovery of money on bills and notes, and prevent the setting up of defences for the

purpose of delay. The Bill of Mr. Keating and Mr. Mullings is well calculated to effect that object, and we are told that it will probably pass the House of Commons; but its success in the House of Lords is somewhat doubtful.

The despatch of business in Chancery Bill is in a somewhat questionable position. We think, if the clauses were struck out which restrict solicitors from the administration of Oaths except at their places of business, or where the deponent is unable to attend from sickness, the Bill might pass, although doubts are entertained whether additional *Chief* Clerks to the Equity Judges should not be appointed, as well as *Junior* Clerks. We trust, however, that no unnecessary delay will take place, because the time is fast approaching when the pressure of business, prior to the Long Vacation, will be greatly increased, and the suitors and practitioners may suffer serious inconvenience if the staff of clerks be insufficient. We beg to suggest, therefore, that, with the exception we have mentioned, it will be expedient the Bill should pass; and reserve for another Session the appointment of additional chief clerks.

We are glad to find that the Public Prosecutors' Bill has been referred to a Select Committee, consisting of Mr. J. G. Phillimore, Sir G. Grey, the Attorney-General, the Lord Advocate, Mr. Watson, the Solicitor-General for Ireland, Mr. Ewart, Mr. Walpole, Sir F. Thesiger, Mr. Napier, Mr. Philipps, Lord Stanley, and Mr. Miles.

The important Bills relating to the Law of Partnership and Limited Liability, of which we give full copies in subsequent pages, will of course receive due consideration. The general impression appears to be in favour of these alterations in the Law.

## EXECUTOR AND TRUSTEE BILL.

### REASONS AGAINST THE BILL.

THE main object of this private Bill is to effect, for the exclusive benefit of the promoters, a most material change in the public law of the land. According to the law as it now stands, no executor or trustee can be remunerated out of the trust estate for the performance of his office, except by the express direction of the testator or settlor; but if this Bill is permitted to pass into a law, the company proposed to be established for the purpose of undertaking

executorships and trusts, will be exclusively authorised to charge any trust estate which they may get into their hands with the payment of a commission to them, the amount of which is only to be limited by their own bye-laws and the sanction of the Treasury; this alteration of the law is so important a part of the whole scheme of the Bill that, unless it be effected, the Bill itself must fall to the ground.

It is believed that any such change in the public law, for the exclusive benefit of an unestablished body, is unprecedented. If the principle of the Bill be admitted, it follows that it is right and proper that all other persons or corporations who are willing to undertake trusts under similar circumstances should also be entitled to charge the trust estates confided to their care with the payment of commission for the risk and trouble incurred in the execution of the trust.

It is submitted that the Bill ought not to pass unless and until the Legislature shall deem it proper, after full and mature deliberation, to alter the existing law by a general measure applicable to all persons.

If it were necessary to discuss the merits of the proposed establishment of a company for the purpose of undertaking the duties of executors and trustees, the futility of the scheme could easily be demonstrated. If a person is minded to make a will or settlement, he confides the execution of the trust which he is creating to those of his relations or friends in whom he places the *greatest personal confidence*. He has to provide for the guardianship of his children, for their maintenance during minority, for the guardian's consent to the marriage of his daughters, and for a multitude of details which require personal consideration of the various contingencies of life as they arise. Assuming that any existing companies, however highly respected and successful they may be in their respective spheres, were willing to undertake such trusts, would a parent desire that the directors for the time being of such an establishment as the Bank of England, or the Royal Exchange Assurance Company should be the guardians of his children, and should have the control of their education and the selection of schools or tutors for them, or should be entrusted with the discretion of consenting to the marriage of his daughters?

Experience has proved, beyond all question, that the management of public companies is only successful in such branches

of business as, from the magnitude of the capital necessarily employed in them, are beyond the compass of individuals, and that in all cases in which private individuals can compete on equal terms with public companies, the former will be the most successful. The business of executors and trusteeships is essentially that which depends on personal confidence and discretion. It requires no capital whatever. It is that which, of all others, appears to be the most unsuited to the deliberation of a board of directors, who must necessarily be continually shifting and changing. The disclosure and discussion of the private affairs of families, of the amount of their property and of the incumbrances upon it before such a board, would be deprecated by all parties concerned; and yet, without such disclosure and discussion, it is impossible that the trust can be properly or judiciously executed.

Moreover, the duties and responsibilities cast upon the directors would be inconsistent and conflicting. On the one hand, they would be responsible to their constituents, the company, for the most profitable exercise of their powers, which could only be effected by increasing the expense of the management of the trust funds committed to their care: while, on the other hand, they would be responsible to their other constituents, the *cestui que trusts*, to limit that expense as much as possible. It is from the conviction of the impossibility of reconciling these conflicting inducements, that Courts of Equity have laid down the rule, that no trustee shall, under any circumstances, derive pecuniary remuneration for the execution of his trust; and so stringent is the rule, that though solicitors, barristers, bankers, and other agents must necessarily be employed and paid in the management of trusts, yet a trustee acting in any of these capacities, for the purposes of the trust, is debarred from the remuneration for his services which must and would be paid and allowed to him if he were not a trustee.

The very nature of such a society as is proposed by the Bill, and the interests of its managers and servants will tend to throw every trust coming within its clutches into the Court of Chancery. Professional men know in how large a proportion of trusts there is sufficient to justify a trustee, if he desire it, in putting himself under the protection or guidance of the Court, with a full certainty that the costs he incurs in the proceedings will be repaid to him out of the

trust fund. Good feeling, and a desire to save expense to the trust, alone keeps a trustee or his advisers from relieving himself from risk by such a course; but how little likely are such feelings or desire to deter the Trust Society from taking a step which may be evidently for their own pecuniary benefit!

For these reasons—and many others might be adduced if it were necessary—

It is submitted that the Bill should not pass into a law.

A similar Bill was before the House of Lords last session, referred by them to a committee, consisting of the Duke of Buccleuch, Earl of Lonsdale, and Lords Brougham, Overstone, and St. Leonards, and upon their report rejected by the House.

## COSTS OF COMPULSORY ENFRANCHISEMENT OF COPYHOLDS.

WE hear no inconsiderable difficulty has arisen regarding the costs payable to the lord of a manor or his solicitor, by a copyholder seeking enfranchisement under the compulsory powers of the Copyhold Act (15 & 16 Vict. c. 5, s. 30), and that the matter is at present under the consideration of the law officers of the Crown.

The intention of the Enfranchisement Acts always appeared to throw the costs of compulsory enfranchisement on the copyholder. We hope ere long to enter more in detail in the matter. In the meantime it behoves lords and stewards of manors to be upon the alert.

## LIMITED LIABILITY BILL.

THE preamble states, that it is expedient to enable members of Joint Stock Companies to limit the liability for the debts and engagements of such companies to which they are now subject: it is therefore proposed to enact as follows:—

1. Any joint-stock company to be formed under the Act of 8 Vict. c. 110 (other than an insurance company), having a capital stock of the nominal amount of not less than 20,000*l.*, divided into shares of a nominal value not less than 25*l.* each, may obtain a certificate of complete registration with limited liability upon complying with the conditions following, in addition to doing all other matters and things now required in order to obtain a certificate of complete registration; that is to say—

(1.) The promoters shall state on their returns to the office for provisional registra-

tration that such company is proposed to be formed with limited liability :

(3.) The word "limited" shall be the last word of the name of the company :

(3.) The deed of settlement shall contain a statement to the effect that the company is formed with limited liability :

(4.) The deed of settlement shall be executed by shareholders holding shares to the amount in the aggregate of at least three-fourths of the nominal capital of the company, and there shall have been paid up by each of such shareholders on account of his shares not less than 20*l.* per centum :

(5.) The payment of the above per-centage shall be acknowledged in or endorsed on the deed of settlement, and the fact of the same having been *bond fide* so paid shall be verified by a declaration of the promoters, or any two of them, made in pursuance of the Act made in the 6 Wm. 4, c. 62 :

And upon such conditions being complied with, and such other matters and things done, the registrar of joint-stock companies shall grant a certificate of complete registration with limited liability to such company.

2. Any joint-stock company, except as aforesaid, completely registered under the said Act of the 8 Vict., and having a capital stock of the nominal amount of not less than 20,000*l.*, may obtain a certificate of complete registration with limited liability, in manner and subject to the conditions following; that is to say—

The directors of such company may, with the consent of at least three-fourths in number and value of its shareholders present at any general meeting summoned for that purpose, make such alteration in the name, nominal value of shares, and deed of settlement of the company as may be necessary for enabling it to comply with the conditions hereinbefore mentioned with respect to joint-stock companies seeking to obtain certificates of complete registration with limited liability; and upon compliance with such conditions the registrar shall grant to such company, by its new name, a certificate of complete registration with limited liability, and thereupon all privileges and obligations hereby attached to companies with limited liability, their shareholders, directors, and officers, shall attach to the company named in such certificate, its shareholders, directors, and officers.

3. Every company that has obtained a certificate of complete registration with limited liability shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertise-

ments, and other official publications of such company.

4. If such company do not paint or affix, and keep painted or affixed, its name, in the manner aforesaid, each of the directors thereof shall be liable to a penalty not exceeding 5*l.* for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any director or other officer of the company, or any person on its behalf, use any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid, or issue or authorise the issue of any notice, advertisement, or other official publication, relating to the business of the company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of 50*l.*

5. No increase to be made in the nominal capital of any company that has obtained a certificate of complete registration with limited liability shall be advertised or otherwise treated as part of the capital of such company, until it has been registered with the registrar of joint-stock companies; and no such registration shall be made unless a deed is produced to the registrar, executed by shareholders holding shares of the nominal value of not less than 25*l.* to the amount in the aggregate of at least three-fourths of the proposed increased capital of the company, nor unless it is proved to the registrar, by such acknowledgment and declaration as hereinafter-mentioned, that upon each of such shares there has been paid up by the holder thereof an amount of not less than 20*l.* per centum; and if any such increase of capital as aforesaid be advertised or otherwise treated as part of the capital of the company before the same has been so registered, every director of such company shall incur a penalty of 50*l.*; and the payment of the above percentage shall be acknowledged in or endorsed on the deed so produced, and the fact of the same having been *bond fide* so paid shall be verified by a declaration of the directors, or any two of them, made in pursuance of the said Act made in the 6 Wm. 4, c. 62.

6. The members of a joint-stock company which has so obtained a certificate of complete registration with limited liability, after such certificate is granted, notwithstanding the provisions contained in the said Act of the 8 Vict., shall not be triable under any judgment, decree, or order which shall be obtained against such company, or for any debt or engagement of such company, further or otherwise than is hereinafter provided.

7. If any execution, either at Law or in Equity, shall have been issued against the property or effects of the Company, and if there cannot be found sufficient wherewith to levy such execution, then such execution may be issued against any of the shareholders to the extent of their shares respectively in the capital of the company not then paid up: Provided always, that no such execution shall issue against any shareholder except upon an order of the Court in which the action, suit, or other

proceeding shall have been brought or instituted, made upon motion in open Court, after sufficient notice in writing to the persons sought to be charged; and upon such motion such Court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

8. Where any company completely registered under the said Act of the 8 Vict. shall obtain a certificate of complete registration with limited liability, the grant of such certificate shall not prejudice or affect any right which previously to the grant of such certificate has accrued to any creditor or other person against the company in its corporate capacity, or against any person then being or having been a member of such company, but every such creditor or other person shall be entitled to all such remedies against the company in its corporate capacity, and against every person then being or having been a member of such company, as he would have been entitled to in case such certificate had not been obtained.

9. No alteration made by virtue of this Act in the name of any company shall prejudice or affect any right which previously to such alteration has accrued to such company as against any other company or person, or which has accrued to any other company or person as against such company, but every such company as against any other company or person, and every other company or person as against such company and the members thereof, shall be entitled to all such remedies as they or he would have been entitled to if no such alteration had been made; and no such alteration shall abate or render defective any legal proceeding pending at the time when such alteration is made.

10. In the case of any company which has obtained a certificate of limited liability, whenever, on taking the yearly accounts of such company, or by any report of the auditors thereof, it appears that three-fourths of the subscribed capital stock of the company has been lost, or has become unavailable in the course of trade, or from the insolvency of shareholders, or from any other cause, the trading and business of such company shall forthwith cease, or shall be carried on for the sole purpose of winding up its affairs, and the directors of such company shall forthwith take proper steps for the dissolution of such company, and for the winding up of its affairs, either by petition to the Court of Chancery, or by exercise of the powers of the deed of settlement, or by such other lawful course as they may think most fit.

11. If any company whose trading and business ought under the last immediately preceding section of this Act to have ceased continues after that time to carry on any trading or business, except for the sole and bona

fide purpose of winding up its affairs, every director of such company shall be liable to a penalty not exceeding 50*l.* for every week during which such business is so unlawfully carried on.

12. Every pecuniary penalty imposed in pursuance of this Act shall be deemed a debt due to the Crown, and shall be recoverable accordingly.

13. This Act shall, so far as is consistent with the contents and subject-matter thereof, be taken as part of and construed with the said Act of the 7 & 8 Vict. c. 110, and the Act of the 11 Vict. c. 78, and all the provisions of the said Acts, save in so far as they are varied by this Act, shall apply to persons and companies applying for or obtaining a certificate of complete registration with limited liability.

14. This Act shall not apply to Scotland.

15. This Act may be cited for all purposes as "The Limited Liability Act, 1855."

## LAW OF PARTNERSHIP AMENDMENT BILL.

1. This Act may be cited for all purposes as "The Partnership Amendment Act, 1855."

2. No person who may hereafter, in manner authorised by this Act, lend any money to any other person not being a banker, or to any partnership or company not being a banking partnership or company, shall be deemed to be a partner with the person or a member of the partnership or company borrowing such money by reason of his receiving or being entitled to receive a portion of the profits made by such person, partnership, or company so borrowing, or a sum varying according to the amount of such profits, either in lieu of or in addition to any interest for or on account of such loan, or by reason of any agreement to bear any portion of the loss which may be sustained by such person or partnership in any trade or business carried on by him or them.

3. A loan shall be deemed to have been made in manner authorised by this Act whenever the following particulars in respect thereof have been registered at the office for the registration of joint-stock companies in London, in cases where the borrower is resident in England, and at the office for the registration of joint-stock companies in Dublin, in cases where the borrower is resident in Ireland; that is to say,

The name, place of business, and description of the lender :

The name, place of business, and description of the borrower :

The amount of the loan :

The proportion of profits, interest, or sum, varying according to the amount of profits, payable in respect of such loan ;

And if any material omission or mis-statement is made in any of the above particulars such loan shall be deemed not to have been made in manner authorised in this Act.

4. Whenever any variation is made in the amount of any registered loan, or in the amount of the profits, interest, or sum payable in respect thereof, or whenever such loan is renewed, such variation or renewal shall be deemed to constitute a new loan, and to require registration accordingly.

5. The following rules shall be observed with respect to the registration of loans :—

(1.) The registrar shall provide proper books for the purpose of registering such loans as aforesaid, but all entries therein shall be in such form as may from time to time be directed by the Lords of the Committee of Privy Council for Trade, hereinafter called the Board of Trade :

(2.) Before registering any loan, the registrar shall require the production of the instrument for securing or manifesting the same, and the profits, interest, or sum payable in respect thereof, or such other evidence of such loan as he shall deem sufficient, and shall stamp the instruments so produced with the seal of his office :

(3.) In case a loan or any part thereof being repaid, the registrar shall, on application being made him, and proof shown of the fact, make an entry to that effect in the register book, specifying in such entry the date of the application ; and the date so entered shall for the purposes of this Act be considered the date of the repayment of the loan, or part of loan, as the case may be :

(4.) The registrar, if so required by the Board of Trade, shall, in the case of loans registered in England, advertise in the *London Gazette*, and in the case of loans registered in Ireland advertise in the *Dublin Gazette*, the re-payment of a loan or any part thereof, in such manner as the Board of Trade may direct :

(5.) There shall be charged in respect of the entry of any registered loan, or of any such variation or discharge as aforesaid, a fee of 5s. in cases where the loan does not exceed 100*l.*, and a fee of 10s. in cases where the loan exceeds 100*l.*, or such other fees as may from time to time be directed by the Commissioners of her Majesty's Treasury :

(6.) Every person may, on payment of a fee of 1s., have access to the registry books of loans, for the purpose of inspection, at any reasonable time during the hours of official attendance of the registrar, and may require a copy or extract of any entry therein, to be certified by the registrar ; and there shall be paid for such certified copy or extract a fee of 1s., and a further fee not exceeding 6*d.* for each folio of such copy or extract beyond the first folio ; and in all Courts of Law and Equity, and elsewhere, every such copy or extract so certified shall be received in evidence without proof of the signature

thereto, or of the seal of office affixed thereto.

6. In the event of a borrower being adjudged a bankrupt, taking the benefit of the Insolvent Debtors' Act, or dying in insolvent circumstances, or if such borrower is a company in the event of its being declared bankrupt, or of an order being made for winding it up, a lender of a registered loan shall not be entitled to receive any portion of his principal, or of the profits, interest, or sum payable in respect of such loan, until the claims of the other creditors of the borrower have been satisfied, and in addition thereto he shall be liable to make good to the other creditors of the borrower any deficiency of assets to the extent of all sums of money or other benefit received by him during the year immediately preceding any such event as aforesaid, on account of the principal of such loan, or on account of the profits, interest, or sum payable in respect of the same, but the principal of such loan which shall have been repaid shall be deemed to have been repaid within such year, unless the date of repayment shall appear by the register to have been prior to the period of such year.

7. No person employed by any person, partnership, or company as agent, factor, servant, or in other like capacity, shall be deemed to be a partner by reason of his receiving, in lieu of or in addition to wages for his service, a portion of the profits made by such person or partnership, or a sum varying according to the amount of such profits.

8. This Act shall not apply to Scotland.

## NOTICES OF NEW BOOKS.

*Miscellanies, Critical, Imaginative, and Juridical.* By SAMUEL WARREN, D.C.L., F.R.S., Q.C. In 2 vols. William Blackwood and Sons, Edinburgh and London, 1855.

OUR readers are doubtless aware that Mr. Warren has long been a leading contributor to *Blackwood's Magazine*, and we rejoice that he has been induced to select and edit a large portion of his articles which have appeared in that celebrated periodical, and have been justly considered of great and general interest, and which treat of subjects of enduring value and importance.

The first volume of the series contains the following articles :—

1. The Bracelets ; a Tale.
2. My First Circuit ; Law and Facts from the North.
3. Sir William Follett, Attorney-General.
4. Memoir of John William Smith, of the Inner Temple, Barrister-at-Law.
5. Who is the Murderer ? a Problem in the Law of Circumstantial Evidence.
6. The Duke of Marlborough.

7. The Paradise in the Pacific.
8. Uncle Tom's Cabin.
9. Calais.
10. Pegsworth ; a Press-Room Sketch.

The second volume comprises :—

11. The Mystery of Murder and its Defence.<sup>1</sup>
12. The Welsh Rioters ; High Treason.
13. High Treason and Murder ; Moral Insanity.
14. The Romance of Forgery.
15. Duelling ; and " What's in a Name."
16. The Murdered Glasgow Spinner ; and the Trials of Daniel O'Connell and William Smith O'Brien.
17. The Martyr Patriots.
18. Speculators among the Stars.
19. Some Personal Recollections of Christopher North.

The interesting and extensive variety of subjects thus comprehended in these volumes render them equally acceptable to the general and the professional reader. They display the rare endowments of the learned author ; his graphic powers, his deep and successful study of human nature, his philosophic reflections, moral and intellectual, and the vivid and impressive style for which he is so remarkable.

The biographical and characteristic sketches of Sir William Follett and Mr. John William Smith, though more peculiarly attractive to lawyers, and especially to those who knew those eminent members of the Profession, cannot fail to attract every intelligent reader. They are written by this distinguished author with his accustomed brilliant talent and eloquence, and evince extraordinary powers of discrimination in delineating the characteristic excellencies of each individual, bringing before the reader the various features of their respective talents and attainments.

We select the following sketch of Sir William Follett, which shows how observant Mr. Warren has been of the forensic powers of that eminent advocate :—

" Let us now, however, endeavour to point out some of the excellencies of Sir William Follett's character ; and perhaps the most prominent of them was his admirable temper. Continually in collision with others, on behalf of important interests entrusted to him, and exposed to a thousand trials and provocations, that temper, nevertheless, scarce ever failed him. Serene and unruffled on the most exciting occasions, his manners were perfectly fascinating to all those who came in contact with him. A rude or unkind expression may be said never to have fallen from his lips towards an opponent—or, indeed, any one ; towards

juniors and inferiors he was always good-natured and considerate ; and towards the judicial bench he exhibited uniformly a demeanour of dignified courtesy and deference. He was very tenacious of his own opinions—confident in the propriety of his view of a case—apparently so, always, for he could assume a confidence though he had it not—and would persevere in his efforts to overcome the adverse humour of Judges and juries, to an extent never exceeded ; yet withal so blandly, so unassumingly, so mildly, that he never irritated or provoked any one. His temper and self-possession were unequalled, and approached as nearly as possible to perfection. Amidst all the distracting multiplicity of his engagements—the sudden and harassing emergencies arising incessantly out of his prodigious practice—he preserved an urbane tranquillity which gave him on all occasions the full possession of his extraordinary faculties, enabled him to concentrate them instantly upon whatever was submitted to his attention, however suddenly—and to conquer without irritating or mortifying even the most eager and sensitive opponent. He never suffered himself to be in a hurry, or fidgeted ; however sudden and serious the emergency which frightened others from their propriety, he retained and exhibited complete composure ; surveying his position with lightning rapidity, and taking his measures with consummate caution—with prompt and bold decision. His guiding energies kept frequently half a dozen important causes all going on at once in their proper course. He would glide in at a critical moment—paying, in his agitated client's view, ' an angel's visit '—and with smiling ease seize advantages seen by none but himself, repair disasters appearing to others irreparable, and with a single blow demolish the entire fabric which in his absence had been laboriously and skilfully raised by his opponent. No impetuosity or irritability, on the part of others, could provoke him to retaliate, or sufficed to disturb that marvellous equanimity of his, which enabled him the rather good-naturedly to convert impetuosity and loss of temper in others, into an instrument of victory for himself. When others, not similarly blessed, would, in like manner, essay to rush to the rescue, their hurried and confused movements served only to place them more completely prostrate before him."

" Towards adverse and frequently interrupting Judges—towards petulant counsel—towards impudent, equivocating, dishonest witnesses, Sir William Follett exhibited unwavering calmness and self-possession ; and withal a dignity of demeanour by which he was remarkably distinguished, and which lent importance to even the most trivial cases which could be intrusted to his advocacy. Perhaps no man ever defeated a greater number of important cases, by unexpected objections of the extremely technical character, than Sir William Follett ; but he would do it with an air and manner so courteous and imposing, as to lead

<sup>1</sup> This appeared in the *Law Review*.



the uninitiated into the belief that there were doubtless good reasons by which such a course, having been reluctantly adopted, was morally justified. This topic naturally leads to some observations upon the consummate skill, the wonderful rapidity of perception, precision of movement, and unflinching vigilance, which characterised Sir William Follett's conduct of business. Doubtless his own consciousness of possessing powers and resources far beyond those of the majority of counsel opposed to him, as evidenced in his extraordinary successes, contributed, in no small degree, to his maintenance of that composed self-reliance, and forbearance towards others, by which he was so peculiarly distinguished, and which was aided by a naturally tranquil temperament. What advantage could escape one so uniformly and surprisingly calm, vigilant, and guarded as Sir William Follett?"

"It might have been supposed that a man so overwhelmed with all but incompatible professional engagements, could not give to each case that full and undivided attention which was requisite to secure success, especially against the ablest members of the Bar, who were constantly opposed to him. It was, however, far otherwise. No one ever ventured to calculate upon Sir William Follett's overlooking a slip or failing to seize an advantage. *totus teras atque rotundus* must indeed have been the case which was to withstand his onslaughts. So accurate and extensive was his legal knowledge, so acute his discrimination, so dexterous were all his movements, so lynx-eyed was his vigilant attention to what was going on, that the most learned and able of opponents were never at their ease till after victory had been definitively announced from the Bench—from a Court of Error—or even the House of Lords. They were necessarily on the alert to the latest moment." \* \* \*

"No member of the Bar, let his experience and skill have been what they might, was ever opposed to Sir William Follett without feeling, as has been already intimated, the necessity of the greatest possible vigilance and research to encounter his boundless resources, his dangerous subtlety and acuteness in detecting flaws, and raising objections; his matchless art in concealing defects in his own case; and building up, with easy grace, a superstructure equally unsubstantial and imposing, and defeating all attempts to assail or overthrow it. Even very strong heads would be often at fault, conscious that they were the victims of some subtle fallacy, which yet they could not at the moment detect and expose; and by their hazy and inconsistent efforts to do so, only supplied additional materials for the use of their astute and skilful enemy, to whom nothing ever seemed to come amiss; who converted everything into an ingredient of success; whom scores any surprise or mischance could defeat or overthrow."

"In the most desperate emergencies, when the full tide of success was arrested by some totally unlooked-for impediment, his vast prac-

tical knowledge, quickness of perception, unerring sagacity, and immovable self-possession, enabled him, without any apparent effort or uneasiness, to remove that impediment almost as soon as it was discovered, and conduct his case to a triumphant issue. He was, indeed, the perfection of a practical lawyer. Whatever he did, he did as well as even his most exacting client could have wished—he won the battle, won it with little apparent effort, and with unflinching grace and dignity of demeanour. A gentleman felt proud of being represented by such an advocate—who never descended into anything approaching even the confines of vulgarity, coarseness, or personality—who lent even to the flimsiest case a semblance of substance and strength—whose consummate and watchful adroitness placed weak places quite out of the sight and reach of the shrewdest opponent, and never perilled a good case by a single act of incaution, negligence, rashness, or supererogation. When necessary, he would prove a case barely up to the point which would suffice to secure a decision in his favour, and then leave it—equally before the Court and a jury—the result afterwards showing with what consummate judgment he had acted in running the risk—the latent difficulties to have been afterwards encountered which he had avoided, the collateral interests which he had shielded from danger. He possessed that sort of intuitive sagacity which enabled him to see *safety* at the first instant of its existence—to be confident of having the judgment of the Court, or the verdict of the jury, when others deeply interested and concerned in the cause imagined that they were making no way whatever." \* \*

"He required, for the purposes of justice, to be followed by a watchful and strong-headed Judge, who could detect the cunning fallacy, or series of fallacies, which had led the jury quite astray from the real points—the true merits of the case; and even such a person was often unable to remove the impression which had been produced by the subtle and persuasive advocate whose voice had preceded his. That voice was one indeed lovely to listen to. It was not loud, but low and mellow, insinuating its faintest tones into the air, and filling it with gentle harmony. His utterance was very distinct—a capital requisite in a speaker—and he had the art of varying his tones, so as to sustain the attention of both Judges and juries for almost any length of time. His person and attitudes, also, were most prepossessing. Their chief characteristics were a calmness and dignity which never disappeared in even the most exciting moments of contest, and of irritability, and provoking interruption. Woe, indeed, to one who ventured to interrupt him! However plausible, cogent, or even just, might be the suggestion thrown in by his adversary, Sir William Follett contrived to make it tell terribly against him, either harmonising it with his own case, or showing it to be utterly inconsistent with that of the interrupting party." \* \* \*

"You felt him to be a man whom you could neither neglect nor trifle with; who was addressing your intellect in weighty words, fathoming your intentions, and detecting your inclinations and prepossessions, and leading you in some given direction with gentle but irresistible force. He would often startle you with the boldness of his propositions, but never till he had contrived, somehow or other, to predispose you in favour of that view of the case which he was presenting. He had a most seductive smile; truth, candour, and gentleness seemed to beam from it upon you; and you were convinced that he felt perfect confidence in the goodness of his cause! He evinced a sort of intuitive sagacity in adapting himself to the character and mode of thinking of those whom he addressed. If he were standing before four Judges, all of different but decided characters—and all continually interrupting him with questions and suggestions, a close experienced observer could detect, in full play, in this wily advocate, the quality which has just been mentioned. He was never irritable, or disrespectful to the Bench, however trying their interruptions; but calm determination was always accompanied with courteous deference for judicial authority. It is believed that no one ever heard a sharp expression fall on Sir William Follett from the Bench."

The memoir of Mr. J. W. Smith is one of the most interesting examples of biographical writing that we have ever read, and cannot fail to be highly gratifying to the numerous friends of that lamented lawyer in both branches of the Profession. Mr. Smith's career at the Bar is traced with remarkable fidelity, though coloured by a friendly hand; but it was scarcely possible to sketch too favourably the features of his clear and acute intellect, or his eminent learning and attainments as a lawyer and a scholar.

The "Notes of the Circuit" are also admirable, and so are all those articles which relate to our Criminal Jurisprudence. In the "Problem on Circumstantial Evidence" the facts and circumstances are analysed and dissected with extraordinary skill. The "Press-Boom Sketch" is a fearful exhibition of human crime and suffering. The "Mystery of Murder and its Defence" relates to the case of Courvoisier, the assassin of Lord William Russell, and his defence by Mr. Charles Phillips—all the circumstances of which are here brought under our notice with great force and clearness, and the vindication of Mr. Phillips from the cruel calumny, so long circulated against him, conclusive and triumphant. It has utterly annihilated the charge. A large part of the second volume is devoted to several of the most remarkable modern

State trials for high treason, including those of O'Connell, O'Brien, and Oxford—the notices of which are accompanied by highly appropriate and profound commentaries. The "Romance of Forgery" is a marvellous story of one Alexander Humphreys, claiming the title of the Earl of Stirling, and the documentary and other testimony in support of the claim are stated and discussed with peculiar skill and acuteness.

The general reader, as well as the lawyer, will be interested in the "Tale of the Bracelets," the "Paradise in the Pacific," "Speculators among the Stars," the "Martyr Patriots," and the Review of "Uncle Tom's Cabin." "Calais" is a most amusing description of a traveller's first appearance on the continent, with deficient funds, and an imperfect knowledge of the language.

The subject of "Duelling," relating to the trial of Lord Cardigan, we have already noticed. The "Historical Criticism on the Duke of Marlborough" is just and discriminating; and the "Recollections of Christopher North" must attract and gratify every reader of *Blackwood*, and indeed every one who has ever read the charming works of that giant of modern literature. We need scarcely add to this imperfect sketch of the contents of these volumes, that we heartily recommend them to the perusal of all our readers.

## LAW OF ATTORNEYS AND SOLICITORS.

### DUTY TO ENROL ARTICLES OF CLERK.

THIS was a claim on behalf of a solicitor, as equitable mortgagee of certain property, for the amount of premium on the defendant being articulated to him, and now came on upon appeal from Vice-Chancellor *Stuart*.

*Lord Justice Bruce* said:—

"The dispute originated and exists between an attorney and solicitor and a gentleman who is or was his articulated clerk. The defendant choosing, or having had chosen for him the Legal Profession, was articulated to Mr. Puddicombe, with whom he appears to have remained a year or two. From some unexplained cause Mr. Puddicombe and he parted, and I collect that the defendant went to India whence he returned in 1848 or early in 1849. On his return from India he made or renewed an acquaintance with the plaintiff; and appearing then to have thought of resuming his profession, he placed himself in the plaintiff's office as clerk, and as I suppose gratuitously. After

he had remained there some time, the articles in question were executed, by which the defendant became the articulated clerk of the plaintiff for five years from September, 1849 (when the defendant was in his 23rd year), in consideration of a premium of 150*l*. By the articles this premium of 150*l*. is mentioned as having been received, and the defendant is expressed to be released from it in the usual form. It was not, however, paid. But the articles were accompanied by a memorandum, not under seal, promising to pay the amount, and also by a document, the subject of the present suit, viz.,—an agreement to charge by way of equitable mortgage certain property of the defendant with the 150*l*. This was in September, 1849. The service appears to have continued for some months, not however with satisfaction to the plaintiff, for it is to be inferred from the evidence that the defendant's habits were irregular and idle. A letter of remonstrance, which is in evidence, strengthens this view. At last, in 1850, the defendant quitted the office, and his employment was never resumed. His departure was final, and the separation seems to have been equally agreeable to the plaintiff and himself. But the 150*l*. remained unpaid. The service, such as it was, I repeat, was to be taken as having commenced in September, 1849, and continued to some time in 1850. The plaintiff having still thought it right, though the service was discontinued, to demand the premium, which it was inconvenient or not agreeable to the defendant to pay, brought an action for it, and the action was met by three pleas:—1st, 'never indebted,' true or untrue; 2ndly, 'payment,' utterly untrue; 3rdly, 'a release,' namely, the deed which had, against the truth of the case, acknowledged the money to have been paid. The plaintiff was advised, and perhaps correctly advised, that it was vain to pursue the action under such circumstances, and accordingly suffered a *non. pros.* to be entered, and thereupon he filed the present claim, for the purpose of making available the equitable mortgage which I have mentioned. It was met by a defence upon affidavits, charging the plaintiff with gross neglect of his duty to the defendant, habitual drunkenness, immorality, profligacy, and incapacity, in terms so gross and to such an extent, that it is impossible in my judgment not to impute to this testimony the most censurable exaggeration, to use the lightest term. This led to other affidavits on the part of the plaintiff, and much evidence of more or less relevancy is thus imported into this unhappy suit.

Fortunately there is a fact which, in one view of the case, is sufficient, according to my judgment, to dispose of it; namely, that the attorney and solicitor did not make or cause to be made the requisite affidavit for enabling the articles to be enrolled, and accordingly they were not enrolled. Now, the Act of the 6th & 7th of the Queen provides, 'that whenever any person shall, after the passing of this Act, be bound by contract in writing to serve as a

clerk to any attorney or solicitor as aforesaid, the attorney or solicitor to whom such person shall be so bound as aforesaid shall, within six months after the date of every such contract, make and duly swear, or cause or procure to be made and duly sworn, an affidavit or affidavits of such attorney or solicitor having been duly admitted, and also of the actual execution of every such contract by him the said attorney or solicitor and by the person so to be bound to serve him as a clerk as aforesaid, and in every such affidavit shall be specified the names of every such attorney or solicitor and of every such person so bound and their places of abode respectively, together with the day on which such contract was actually executed; and every such affidavit shall be filed within six months next after the execution of the said contract with and by the officer appointed or to be appointed for that purpose, as hereinafter mentioned, who shall thereupon enrol and register the said contract, and shall make and sign a memorandum of the day of filing such affidavit upon such affidavit and also upon the said contract.' The Act also provides (s. 9).—'That in case such affidavit be not filed within such six months, the same may be filed by the said officer after the expiration thereof, but the service of such clerk shall be reckoned to commence and be computed from the day of filing such affidavit, unless one of the said Courts of Law or Equity shall otherwise order.'

"In the present case, the six months had passed before the defendant had finally quitted the office and employment of the plaintiff, and accordingly, therefore, the service of the defendant could not count, except from a time which never arrived, namely, the period when the affidavit should have been filed for the purpose of procuring enrolment; unless a Court, in the exercise of its discretion, should order that the affidavit might be filed subsequently, as allowed by the Statute. It is impossible for us to say whether, in a state of things which never existed, the Court would have so ordered; and accordingly the defendant never has been in a position in which his services could count, and I must hold that position to have been occasioned by a neglect on the part of the plaintiff; a duty thrown upon him by Act of Parliament. It would have been incumbent on the plaintiff to perform this duty, if the defendant had been a minor, and it not the less became the attorney's duty because the clerk happened not to be a minor, and happened to have received some previous instruction, and to have had some previous experience. Now, whether if this case had been made in a Court of law, the circumstances would have been a defence, I am not here to consider. But I apprehend that a cross action might have been brought by the clerk against the attorney for a neglect of duty to the disadvantage of the clerk. We are not bound to send the parties to a Court of law, either by reforming the deed or upon admissions; for whatever doubt may at any

former time have existed on this point is now removed by the 62nd section of the Act for the improvement of the practice in Chancery.

"My impression, formed upon the undisputed facts is, that if this matter had arisen before a Court of law in a shape calculated to raise the point, either in one action, if in one action it could be tried, or in an action and a cross action, if in one action it could not be tried—the result would have been that the attorney could not have recovered, or if he had he would have lost in the one what he would have gained in the other.

"The consequence, without entering into more prolonged investigation of the matter, is that the title of the plaintiff has failed. An undertaking has been given. From this undertaking I see no reason to relieve the defendant." *Dufaur v. Sigel*, 4 De G. M'N. & G. 520.

## LAW OF COSTS.

### UNDER LANDS' CLAUSES' ACT.—ARBITRATION.

In an arbitration under the 8 & 9 Vict. c. 18, ss. 25-37, if the arbitrator award, in respect of part of the landowner's claim for compensation, a larger sum than the company offer in respect of that part, and at the same time award, as to another distinct part of the claim, in respect of which the company offer nothing, that the landowner has suffered no damage, the landowner is entitled under s. 34, to those costs only of the arbitration which are incident to that part of his claim in respect of which compensation has been awarded. *Regina v. Bream*, 17 Q. B. 969.

### OF DEFENDANT'S PARTICULARS OF OBJECTION UNDER PATENT LAW AMENDMENT ACT.

In an action for the infringement of a patent, the 43rd section of the 15 & 16 Vict. c. 83, makes the certificate of the Judge, who tried the cause, that the defendant's particulars of objections have been proved by the defendant, a condition precedent to his right on taxation to any costs in respect of such particulars even in the case of a nonsuit. *Honiball v. Bloomer and others*, 10 Exch. 538.

## QUESTIONS AT THE EXAMINATION.

Trinity Term, 1855.

### I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?

2. State the particular branch or branches

of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any, and what, law lectures?

### II. COMMON LAW AND PRACTICE OF THE COURTS.

5. What do you understand by the words "Common Law?"

6. What alterations in the Law of Evidence have been made by the recent Statutes?

7. What is the proper course to pursue to prevent the operation of the Statute of Limitations where a defendant has not been served with the writ?

8. Can a person obtain an injunction at law, and in what cases?

9. What course may be adopted to obtain a discovery from the opposite party personally in an action at law?

10. What is now the law with respect to the proving of instruments by the attesting witnesses?

11. What circumstances preclude a person from a successful application to set aside process or proceedings for irregularity?

12. Where a year has elapsed since the last proceedings in an action, what notice is required to be given by the party seeking to proceed?

13. When the defendant pleads the general issue intending to give special matter in evidence by virtue of an Act of Parliament, what particulars should accompany the plea?

14. Has a judgment creditor any, and what, means of getting at debts which may be owing to the judgment debtor, and what is the course which he should adopt?

15. "I guarantee the payment of any goods which C. D. may deliver to A. B."—is this a good guarantee?

16. Upon what principle does the liability of a husband upon his wife's contract rest, and in what cases may a wife be regarded as the general agent of the husband?

17. Within what time must error be brought to reverse a judgment, and what exceptions are there to the limit?

18. What is a feigned issue? in what case is it resorted to? and by what authority is it framed?

19. Explain the difference between a verdict and a judgment.

### III. CONVEYANCING.

20. What is an estate tail? By what words is it created, and what words constitute an entail general, and what an entail special?

21. What power of disposition has a tenant in tail over entailed property, both as regards his own estate tail, and all remainders over, and distinguish the case where there is a protector of the settlement from the case where there is no protector?

22. By what method of conveyance is the

power of disposition of a tenant in tail at the present day to be exercised?

23. State the searches which should be usually made on a purchase of freehold property.

24. Give a general sketch of the devolution of personal property according to the Statutes of Distribution. What was the position, legal and equitable, of an executor in respect of residue undisposed of by the will previously to the Statute 11 Geo. 4, and 1 Wm. 4, c. 40; and what alteration did that Statute make?

25. Where an intestate dies seised of real estate, leaving children, state the law of descent according to the Common Law, and mention certain exceptional lines of descent allowed by custom.

26. In a sale of land by trustees, what covenants can be required of them in the conveyance?

27. What is required by the Statute of Frauds, to constitute a valid agreement as to lands?

28. How are the requisitions of the Statute of Frauds complied with at an auction as usually conducted.

29. What are the proper modes of mortgaging freehold, leasehold, and copyhold estates? State them severally.

30. By what methods alone can a will be revoked under the late Statute of Wills, 1 Vict. c. 26?

31. State generally, the more important provisions of the late Statute of Wills, and point out the alterations effected thereby.

32. A. dies seised of real estate and intestate, leaving a father, a sister of the whole blood, and a brother of the half blood. Upon whom would the estate have descended previously to the operation of the late Inheritance Act, 3 & 4 Wm. 4, c. 106; and upon whom would it descend subsequently thereto?

33. To whom, in the absence of any special custom to the contrary, do the timber and minerals upon and under the waste lands of copyhold manors belong, and to whom the timber and minerals under copyhold lands?

34. An estate is limited to A. for life, and after his death to the heirs of his body, what estate does A. take?

#### IV. EQUITY AND PRACTICE OF THE COURTS.

35. What are the several modes of commencing a proceeding in Equity according to the present practice? Mention the first step in each proceeding.

36. In a case where a defendant neglects to answer, or puts in an insufficient answer, to a bill, how would you proceed to compel an answer, and a complete answer, according to the present practice?

37. In what case would you demur to a bill instead of answering? And state how a demurrer differs from an answer in regard to the facts alleged in the bill.

38. How does the Court administer assets

as between judgment, bond, and simple contract creditors, and as between judgment creditors themselves, though of different priorities of date?

39. How is an Irish judgment regarded in the administration of assets in England?

40. State the course of distribution of an intestate's personal estate in the following cases: where there is a wife and children—where there is a wife and collaterals only—where there is no wife or children, but a father, and brothers and sisters—where there is no father, but a mother, brothers, and sisters, and children of a deceased brother or sister.

41. Explain the doctrine of election as applied in a Court of Equity. Take a case where it arises under a will.

42. State some cases in which relief can only be obtained in a Court of Equity.

43. In the case of the breach of a contract for the sale and purchase of an estate, what is the remedy in equity as distinguished from the remedy at law?

44. In the case of a contract for the sale and purchase of a freehold estate, where the vendor dies before conveyance, who is entitled to the purchase-money, the heir or devisee, or the personal representative, and if the purchaser dies before conveyance to whom does the estate go, and by whom is the purchase-money to be paid?

45. If a husband assign his wife's reversionary equitable interest in personals, and die before the reversion falls into possession, will the right of the wife be affected thereby, if she survive?

46. In the case of a trust of money for the separate use of a woman free from the control of any husband, with a provision against alienation, would the restriction prevail if she is single when the interest vests in her, and would it exist during a subsequent coverture, and would it continue in force if she afterwards became a widow?

47. State a case in which money is treated in equity as real estate, and a case in which land is regarded as personal estate.

48. Where no time of payment or rate of interest is expressed in a will, at what period is a legacy payable, and from what time is the legatee entitled to interest, and what would be the rate of interest?

49. In what case will a legacy not lapse by the death of a legatee in the lifetime of the testator?

#### V. BANKRUPTCY AND PRACTICE OF THE COURTS.

50. State generally the object of the Bankruptcy Laws: 1st, as regards creditors; 2nd, as respects the bankrupt himself.

51. What are the principal Statutes of recent date respecting bankrupts?

52. Point out the principal new matters which were introduced into the Bankruptcy Law and proceedings by the Act of 1869.

53. What are the three conditions required to constitute a bankrupt?

54. Is there any, and what, jurisdiction in bankruptcy over a joint-stock company neglecting to pay its debts?

55. What is the nature of the dealing required to constitute a trading within the meaning of the Bankrupt Laws?

56. Enumerate the different Acts of bankruptcy.

57. What are the requisites to support a petition by a creditor for an adjudication in bankruptcy?

58. As to the petitioning creditor's debt, what must be its character?

59. Is it essential to the validity of a petition for adjudication, that the petitioning creditor's debt should be due and payable at the time of the act of bankruptcy?

60. Specify generally the kinds of debts which may be proved under a bankruptcy.

61. Is any, and what, priority allowed to judgment creditors?

62. In what cases will a joint creditor be entitled to dividends out of the *separate* estate? And if there be no joint estate, and an insufficient separate estate, is any joint creditor permitted to participate in the latter?

63. Is there any, and what, difference in the course of proceedings to be taken by a creditor having a *legal* mortgage, and by one having a deposit of deeds constituting an *equitable* mortgage?

64. Can a landlord distrain for rent, when the messenger is in actual possession of the bankrupt's goods on the premises?

#### VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

65. What is the nature of the wrong for which an indictment lies, and in whose name is it brought? Why is it illegal to compound or compromise an indictable offence? And state what exceptions there are to this rule.

66. In the following instance, state which of the parties are principals and which accessories, either before or after the fact. Where *A.* persuades *B.* to steal goods, which he does, while *C.* stands by and watches to prevent detection; *D.* afterwards conceals *A.* in his house, knowing of the theft. How may accessories can now be tried, and show how it differs from the old practice?

67. State shortly the question which is proper to be put to the jury where insanity is set up as a defence upon a trial for a criminal offence.

68. What is the duty of a grand jury in regard to finding or ignoring bills? In what respect does it resemble a *coroner's* jury? What number of jurors must concur in the finding?

69. What are the different kinds of challenges of jurors, and what is the number of *peremptory* challenges allowed to the defendant in cases of felony?

70. Is it in general allowable to charge more than one distinct felony in the same indictment, and state any exceptions which have been introduced by Statute? In ordinary

cases what is the course pursued where a prosecution includes two separate felonies in the same indictment?

71. What variances between the statement in the indictment and the facts proved is it now allowable for the Court to amend, and what terms may it impose upon making the amendment?

72. If a person is indicted for actually committing a felony or misdemeanor, and he be proved to have only attempted to commit the offence charged, or if he be indicted for a misdemeanor and the facts proved amount to a felony, what course may now be adopted in either case; and wherein did the law differ formerly?

73. Define larceny. What matters were the subject of larceny at Common Law? How far is it necessary that there should be a positive gain to the person committing the theft? Where a person carries away and destroys a post-letter for the purpose of suppressing inquiries which it was supposed to contain, is that a larceny? If a person find a chattel, under what circumstances will he, or will he not, be guilty of larceny?

74. What is the nature of the pretence necessary to be proved to convict a person of obtaining money by false pretences? In what respect does this offence differ from larceny?

75. What is the rule as to the liability of infants to be convicted of felony? Are they considered incapable of committing felony up to any, and what age, and at what age are they liable as adults?

76. In what cases will the alteration of a genuine instrument amount to forgery? In indictments for forgery, is it necessary to set out, in its terms the document alleged to be forged? Is it necessary to allege or prove an intent to defraud any particular person?

77. Upon whom is the liability cast by the Common Law of repairing highways and public bridges, and in what manner may that liability be shifted upon any other bodies or private individuals? If part of a highway which a parish is bound to repair be destroyed by natural causes (as washed away by the sea), can the parish be compelled to restore it?

78. What restrictions does the law of England impose upon the admissibility of confessions in criminal cases? Can the evidence of a wife ever be received in criminal cases for or against her husband? And if so, state under what circumstances. In what events may the deposition of a witness taken before the committing magistrate be read in evidence at the trial?

79. What is the effect of five years' residence in a parish upon the removeability of a pauper chargeable thereto? Does it affect the settlement also? Under what circumstances will, or will not, absence from the parish during the five years, amount to a break of residence, and so render the pauper removeable?

# METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

## ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

April 18th, 1855.

[Concluded from p. 89, ante.]

**Bills of Exchange.**—It has long been felt that some check ought to be provided by the Legislature to the practice of defending, for time only, actions upon bills of exchange; and an attempt was made last year to extend to England a form of procedure which has long been extant in Scotland, under the title of "Summary Diligence." For this purpose a Bill was introduced into the House of Lords by Lord Brougham, providing that dishonoured Bills of Exchange and promissory notes, having been protested according to the existing practice with foreign bills, should be registered in a new office in the Common Pleas, to be created for that purpose; and that upon a certificate of such registration, execution might issue, unless the defendant obtained an order from a Judge permitting him to defend an action upon an affidavit of merits.

In the opinion of the Committee this proposal is liable to very serious objections. Instead of simplifying the actual practice, it provides an entirely new procedure, confined to the Court of Common Pleas, and rendering necessary all the expense of a new Registry Office and staff of officers.

The entire expense of the notarial protest would be useless in every case which should ultimately be defended. On the other hand, in all undefended causes, its effect would be to transfer from solicitors to notaries an important branch of Common Law business. The scheme also assumes that a notarial protest is evidence of the requisites which entitle the holder to recover in an action against the drawer or indorser; whereas, in point of fact, the protest affords no such evidence; it cannot be evidence as to the handwriting of any of the parties, and, especially, it cannot be evidence of due notice of the dishonour having been given to the drawer or indorsers, which must be a subsequent act.

The disbursements in commencing proceedings upon bills of exchange would, by this plan, be in every case considerably increased.

It was proposed by the Committee that the holder of a dishonoured bill or note should be allowed to proceed before a Judge at Chambers, by a summons *ex parte* upon an affidavit of due presentation, for an order of judgment and execution. Such a mode of procedure would possess all the advantages of the Scotch mode; would not force professional business out of its natural channels; and would afford efficient guarantees against being employed oppressively or unduly.

Lord Brougham's Bill also contained a clause providing that every judgment and exe-

cution obtained under the Act against any debtor, within two months of bankruptcy, should be null and void. This clause, however, which was open to many obvious objections, has been abandoned by the promoters of the Bill.

This Bill was passed by the House of Lords, and read twice in the House of Commons, where, however, it did not get through Committee. It has this year been again introduced by Lord Brougham, and passed by the House of Lords; but in the House of Commons it has had to compete with another Bill, which had been already brought in by Mr. Keating and Mr. Mullings; by which actions upon dishonoured bills and notes may be commenced by a writ of summons in a slightly altered form; and to such an action no defence is to be allowed, except after obtaining the leave of a Judge. This Bill possesses many advantages over Lord Brougham's, and is exposed to none of the serious objections which have been pointed out by the Committee. This scheme differs slightly from that proposed by the Committee, but does not appear objectionable, as the defendant is the party *prima facie*, in default, and it seems fair to throw upon him the onus of showing that he should be allowed to defend.

**Bills of Sale.**—The Bill providing for the registration of bills of sale appeared to the Committee calculated to be of service in distinguishing real from fictitious credit; and they therefore presented a petition in its favour. Objections, however, to the working of the Bill have come under the notice of the Committee, and it may probably require amendment.

**County Courts.**—The leading injustice of the County Court system, by which the main cost of professional assistance is thrown upon the party resorting to it, irrespective of the result of the proceedings, remains still unredressed, although it is now nearly three years since the Act was passed which required a scale of costs to be fixed. The Committee have this year repeated their inquiries as to when it is likely that the scale will be issued. At first they only succeeded in eliciting the same unsatisfactory reply which they had to report last year, namely, that no scale can be determined upon until the Commission should have made their report. They have, however, since been informed that the report has been signed by the Commissioners, and as soon as it appears, the Committee will repeat their applications to have the requirements of the Act of Parliament complied with.

**Registration.**—In their report last year the Committee noticed the appointment of the commission "to consider and report upon the subject of the registration of title with reference to the sale and transfer of land." The Committee received, in October last, a number of printed copies of questions which had been framed by the Commissioners, and were being circulated for the purpose of eliciting competent opinions as to the possibility and expediency of devising a scheme of registration

founded upon the principle of placing upon the register legal titles only; leaving all equitable interests to be dealt with and protected by unregistered deeds only; and to this extent assimilating the laws of real and personal property. The Committee circulated these questions throughout the country, with the intention of framing, from the various answers received, a collective reply in the name of the Association. When, however, the replies were all before them, they contained views and opinions differing so widely and irreconcilably, that it was evident that no collective answers could be given by the Committee which would not be opposed to the views of important members of the Association. The Committee, therefore, stated this fact to the Commissioners in a letter, with which they forwarded all such of the various original answers as they had received signed by the gentlemen sending them.

The Committee have already expressed their opinion that if this scheme of registration be not feasible, no other scheme can be; and they await the appearance of the Commissioners' Report on the subject with much interest.

**Crown Debts.**—The attention of the Committee has been drawn by one of their members to the delay and expense frequently thrown upon purchasers in order to clear estates from crown debts. This difficulty arises from the large number of cases in which recognizances to the Crown are entered into; which are frequently varied and multiplied to a considerable extent by parties who are probably not even aware that each recognizance is registered as a crown debt, and remains a permanent incumbrance upon their title, until they themselves have taken the necessary steps to have the register cleared. When at length this has to be done, the delay and expense necessarily attending the process are increased by the rule which prevents the registrar from entering satisfaction, except upon the fiat of the Attorney-General, whose fee is two-and-a-half guineas in each case.

At the beginning of the present Session Lord St. Leonards introduced a Bill into the House of Lords for the better protection of purchasers in various cases; including those in which the vendor being a mortgagee indebted to the Crown, should be paid off prior to, or at the time of, the execution of the conveyance.

The Committee thought this a favourable opportunity to endeavour to procure some alleviation from the burdens above alluded to, by an abolition of the Attorney-General's fee, which is paid upon a signature, involving no exercise of either judgment or discretion; and they brought the subject before his lordship. Lord St. Leonards, however, stated in reply that he did not think the suggestion could be acceded to, and the Bill was accordingly passed without it. The Committee will be prepared again to raise this question whenever an opportunity shall present itself. It will, probably, be impossible to provide a procedure for the discharge of registered Crown debts more

beneficial for purchasers than that which obtains in the case of ordinary registered judgments; but there is no reason why the procedure should not be uniform; and it is a burden upon the transfer of land, which may be reasonably complained of, that in the case of these registered recognizances, which, from their number, must necessarily always interfere, to some extent, with the free dealing with property, in addition to the certificate of the Crown solicitor that the debt has been discharged, the purchaser is compelled to obtain, at the price of a considerable fee, the Attorney-General's fiat; which is given as a matter of course upon the Crown solicitor's certificate, which provides no possible protection either to the Crown or to the purchaser, and which is, in fact, only a pretext for levying a tax upon a portion of the public for the sake of increasing the emoluments of one of the law officers of the Crown.

**Stamps.**—The Committee took advantage of the Stamp Act which was introduced last Session by Government, to suggest two amendments in order to supply what they believed to have been unintentional omissions from the former Act. By that Act, the stamp on a lease, where the rent reserved is less than 5*l.*, is fixed at 6*d.* This provision has been interpreted by the Commissioners so strictly, that they have decided that a lease reserving a peppercorn rent is liable to a stamp of 3*s.* The Committee, therefore, proposed that it should be declared, that leases reserving a peppercorn or other nominal rent should be stamped as leases reserving a rent of less than 5*l.* This suggestion was urged in the House by Mr. Hadfield. Government, however, declined to entertain it, on the ground that they did not know how far it might extend.

The Committee also pointed out that when the *ad valorem* stamp upon leases generally was reduced to its present scale, the stamp upon a license to demise copyholds was still left at the fixed amount of 1*l.*; and they suggested that in future it should be of the same amount as the *ad valorem* stamp upon a lease reserving the same amount of rent, up to 10*s.*, which should be its maximum amount. This suggestion, which was also submitted to Government, at the request of the Committee, by Mr. Hadfield, was adopted, and is now the actual law.

**Successions Duties.**—The Committee have recently had communicated to them a question which arose between one of their members and the Comptroller of Legacy Duties at Somerset House, upon the right construction of the Successions Duties' Act, which they are glad to take this opportunity of reporting for the general benefit of the Profession and their clients. It appears to be the custom of that office, in cases where dividends have accrued in the interval between the decease of the predecessor and the passing of the accounts, to claim duty upon such dividends in addition to the principal sum. In the case now referred to, the Solicitor for the successor disputed this claim, and, after some discussion, and being



supported by an able opinion of Mr. Jarman, the claim was abandoned. The Committee have been informed, however, that it is still made in similar cases.

**Criminal Law.**—A Bill was last Session brought into the House of Commons, by the late Mr. Aglionby, to enable magistrates to deal summarily with prisoners charged before them with larceny, in certain cases. The Committee took advantage of this opportunity to suggest to Mr. Aglionby the introduction of a provision which has been, from time to time, for several years past, advocated by distinguished authorities, including the present Lord Chief Justice of the Queen's Bench, to enable prisoners to elect to be tried without formally pleading Not guilty—a plea which is stated by all those who have had opportunities of judging to be frequently felt by prisoners to be a moral falsehood, and an addition to their offence from which they shrink. Mr. Aglionby, on having the subject brought to his attention, cordially adopted the suggestion. The Bill, however, though it passed the second reading, was not ultimately proceeded with.

Similar Bills have been introduced into Parliament this Session, and the Committee have repeated this suggestion; with what result, however, they are not yet able to report.

**Bills in Parliament.**—The war has so fully occupied the attention of Parliament as to prevent so much attention being given to the amendment of the law as the public have been accustomed to for the last few years. The number of Law Bills which had been already brought before Parliament at the periods of the last five annual meetings has been as follows:—In 1850, 44; in 1851, 26; in 1852, 34; in 1853, 54; and in 1854, 66. In the present year 36 Bills have already been read a first time—nine in the House of Lords, and 27 in the House of Commons.

The Bills of Exchange Bill, which has been already noticed, has been passed by the House of Lords, and after being read twice by the House of Commons has been, with the Bills of Exchange and Promissory Notes Bill, referred to a Select Committee.

On the 29th January, Lord Brougham presented a Bill for the more speedy trial and punishment of offenders in certain cases, which, however, was probably only intended as a spur to Government, for, upon the 20th February, a Bill, having the same general object of enabling magistrates in Petty Sessions to deal summarily with prisoners accused of larceny where they plead Guilty, or where the value of the property stolen does not exceed 10s., was presented by the Lord Chancellor. Each of these Bills was appointed to be committed for the 27th Feb., and on that day Lord Brougham withdrew the former. The Lord Chancellor's Bill has passed the House of Lords, and been read twice in the House of Commons.

Lord St. Leonards' Bill for the better Protection of Purchasers against Judgments, Lispendens, and Life Annuities, which has also been already noticed in this report, has been passed by both Houses.

A short Bill, to explain and amend the Larceny Regulation Act, 1853, has been introduced by Lord St. Leonards, and has passed both Houses. Its object is simply to authorise the Lord Chancellor, in matters of larceny, to empower Committees of Estates to grant leases binding on issue, or remainder men.

The Lord Chancellor has presented a Bill to the House of Lords to make further provisions for the more speedy and efficient despatch of business in the High Court of Chancery, and to vest in the Lord Chancellor the ground and buildings of the said Court situate in Southampton Buildings, Chancery Lane, with powers of leasing and sale thereof. By this Bill provision is made for the appointment of additional junior clerks to each of the chief clerks of the Equity Judges. The office of Master of Reports and Entries is abolished from the first vacancy; and the duties of the office transferred to the Clerks of Records and Writs.

The Bill to enforce, in any part of the United Kingdom, judgments and orders obtained in any of the Superior Courts of Record in the United Kingdom, which was last year passed by the House of Commons, and allowed to drop after having been read once in the House of Lords, was this year again introduced by Mr. Cranford and Mr. Dunlop; the second reading has been, however, put off for six months, upon the plea that the Bill proposed to deal with part of a larger subject, which ought to be dealt with together and by the Government. This is a Bill which was several years ago presented to the House of Lords by Lord Lyndhurst, at the suggestion of the Committee of this Association; and it would provide a remedy for an evil which is both manifest and indefensible.

Two Bills have been brought in by Sir Benjamin Hall, one to alter and amend the Public Health Act, and the other to consolidate and amend the Nuisances Removal and Diseases Prevention Acts. These have been read twice, and now stand committed to a Select Committee. They are of great general interest and importance, but they do not come within the special objects of this Association.

The same may be said of the Bill to consolidate and amend the Law relating to Friendly Societies, which, however, should be watched by solicitors who are concerned for such Societies.

Mr. Phillimore has again introduced his Bill for the appointment of Public Prosecutors. The Committee have seen no reason to change the unfavourable opinion they expressed last year of the principle of this measure, and they have taken measures that their objections to it shall be laid before the House should the Bill be proceeded with.

Mr. R. Phillimore has succeeded in passing through the House of Commons a Bill for Abolishing the Jurisdiction of the Ecclesiastical Courts in England and Wales in suits for Defamation; and it appears probable that it will also be passed by the House of Lords. The Solicitor-General has also re-introduced his Testamentary Jurisdiction Bill; and the

Committee will do what they can to assist its progress through the House.

Mr. Heywood and Mr. Headlam have brought in a Bill to Legalise Marriages with a Deceased Wife's Sister or a Deceased Wife's Niece. It is not, however, probable that they will succeed in getting it passed this Session.

Sir Benjamin Hall has also introduced a Bill for the Better Local Management of the Metropolis, the object of which is to provide complete municipal institutions for all the metropolitan boroughs. The Bill contains 186 sections, besides six schedules. It will be carefully examined by the Committee, who will watch the mode in which it will affect the interests of the Profession.

Such are the principal Bills which are this year before Parliament. Those which have not been noticed in this Report are either of minor importance, or else effect only Ireland or Scotland.

*The Committee.*—In concluding their Report, the Committee are anxious to impress upon the members that although they cheerfully give such time and labour as they can afford to the performance of their duties, and although they believe that considerable good has been effected by the Society, they yet feel strongly that its results are by no means commensurate with the importance of the subjects with which it deals; and they never will be so, unless the Acting Committee have placed at their disposal a very considerable increase of pecuniary support from the Profession generally; while they are equally anxious to secure additional working strength by the appointment upon their own body of additional members possessing the time and the experience to enable them to undertake the active duties of committeemen.

The annual nomination of the governing body has hitherto been left entirely in the hands of the Committee originally appointed, who, while they appreciate this proof of the confidence of the subscribers, yet would gladly receive nominations of additional members, not only at the annual meetings, but also at any time during their year of office.

The Association at present numbers 854 members, of whom 228 are metropolitan and 626 provincial. There are 142 life members and 712 annual subscribers. During the year, including arrears, 453 subscriptions have been received. The total income has amounted to 485*l.* 3*s.* 9*d.*, and the expenses, including liabilities, to 444*l.* 18*s.* 11*d.*

#### ADMISSION OF SOLICITORS.

The Master of the Rolls has appointed Tuesday the 12th of June, 1855, at the *Rolls Court, Chancery Lane*, at four in the afternoon, for swearing Solicitors.

Every person being desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, *Rolls Yard, Chancery Lane*, on or before Monday, the 11th day of June, 1855.

#### SELECTIONS FROM CORRESPONDENCE.

##### UNEASY CONDITIONS OF SALE OF FREEHOLD LAND.

A PRINTED particular of sale of land by private contract in Wiltshire, has lately been brought to my attention, which requires some notice.

It is coolly stipulated that the vendor shall within 30 days deliver an abstract of title on payment of two guineas, to commence with a deed dated in October, 1849, within a period of six years, and the vendor is not to be required to show an earlier title.

And, as is too often usual in such cases, the purchasers were prevailed on to allow the vendor's solicitor to prepare their deeds of conveyance, although their own solicitor had been consulted on the matter subsequently to the contract of sale, and the deeds thereby conveyed to be produced are actually limited to deeds dated within the last three years, and not even comprising the deed above referred to of October, 1849.

In other cases in the country I have even still a stipulation that the conveyances shall be prepared by the vendor's solicitor at the expense of the purchasers. Thus, probably, giving a purchaser a doubtful title or one pregnant with danger, as incumbrances, although not communicated, would affect him.

M. A.

##### SATURDAY HALF-HOLIDAY.

Sir,—The Legal Profession ought to be thankful to you for your endeavours to procure them the relaxation of half a day once a week, in addition to the Sunday. I have a suggestion to make which would obviate the necessity of a half-holiday on Saturday. We have certain festivals and fasts which the Church of England commends to the observance of her children. Why could we not have a half-holiday on each of these days, which would give the opportunity to those who are inclined to attend the services of the Church, while the scruples of dissenters need not be offended?

AN INQUIRER.

#### PROPOSED REFORM IN LAW REPORTING.

In the recent Number of the *Law Magazine*, it is proposed—

“That an Act of Parliament should be passed for the regulation of the reports; that a staff of competent reporters should be appointed by, to be under the control of a certain number of the leading members of the Bar; that the reports should be considered authentic by the Courts, and that no reference should be allowed in argument to any other report; that the decisions of the three Courts should be published in a consolidated form; that they should be issued to the public within as short a period as is consistent with accuracy; and that the charge to

the subscribers should not be larger than what would be found adequate to support the expenses of the work. If our views were wholly or in part adopted, in commencing the endeavour by trying the experiment upon the Courts of Common Law, we predict that the same course would be speedily followed with respect to the reports of the other Courts, whose decisions are treated amongst themselves as of binding authority. The advantages flowing from this reform would not only be felt by the relief afforded to the pockets of the profession, but it would be found that the great confusion produced by the multiplicity of reports which now compete with each other would be swept away, that ampler yet simpler digests would be established, and that our text-books would become conspicuous rather as embodying the principles of the law, illustrated by instances drawn from the reports, than as containing an ill-digested and confused mass of conflicting cases."

## NOTES OF THE WEEK.

### DEFECTIVE OFFICE COPIES IN CHANCERY.

In a case before the Lords Justices on the 31st May, their lordships repeated a complaint, which they had frequently made of late, as to the extreme inaccuracy of the office copies of proceedings, documents, &c., in Chancery, the Lord Justice Turner remarking that the way in which they were prepared was most scandalous; and the Lord Justice Knight Bruce intimating that it might be needful to bring the matter under the notice of the Lord Chancellor.—From the *Morning Herald*.

### QUEEN'S BENCH SITTINGS.

This Court will hold sittings to hear arrears in the Special Paper, Crown Paper, and New

Trial Paper, on *Monday* the 18th day of *June*, and two following days; such cases from the country as may remain in the *New Trial Paper* will be first taken.

### COMMON PLEAS SITTINGS.

This Court will on *Monday* the 24th day of *June* inst. hold a sitting, and will proceed to give judgment in the cases that will then be standing over for the consideration of the Court.

### SITTINGS OF EXCHEQUER OF PLEAS.

This Court will hold sittings on *Thursday* the 14th day of *June* instant, and on every succeeding day (Sundays excepted) until and including *Saturday* the 23rd day of *June* inst., and will at such sittings proceed in disposing of the business then pending in the *New Trial* and *Special Papers*, and will also hold a sitting on *Thursday* the 5th day of *July* next, and will on the said 5th day of *July* next, proceed in giving judgment in all matters then standing for judgment.

### LAW APPOINTMENTS.

Mr. *W. Leece Drinkwater*, Deempster of the Isle of Man, has been appointed Senior Deempster in the room of Mr. *Heywood*, deceased.

Mr. *John Clowes Stephen*, Advocate, has been appointed Second Deempster, in the room of Mr. *Drinkwater*.—From the *Observer*.

Mr. *William Newton*, solicitor of Newark, has been appointed Coroner for Nottinghamshire.

Mr. *Henry John Backhouse* was on *June* 1st admitted as a Proctor of the Arches' Court by virtue of a rescript from his Grace the Archbishop of Canterbury.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

*Regina v. Handcock and others.* June 2, 1855.

PETITION TO QUASH SCI. FA. ANNULLING LETTERS PATENT.—ERROR AT LAW.

*A writ of sci. fa. had issued to annul certain letters patent for an invention: Held, that the proceeding to quash such writ was under the 17 & 18 Vict. c. 125, s. 39, by appeal to the Court of error at Common Law, and not by petition on the Common Law side of this Court.*

THIS was a petition on the Common Law side of the Court to quash, supersede, or recal a writ of *sci. fa.*, which had issued to annul certain letters patent for an invention in the manufacture of vulcanised india rubber.

*Webster, Karstake, and E. K. Karstake* in support; *Rolt, Hindmarch, and Macrory*, contra.

The Lord Chancellor said, that the 39th section of the 17 & 18 Vict. c. 125,<sup>1</sup> was intended

expressly to reach such cases as the present, and that the petitioners must try the question at Common Law.

### Lords Justices.

*Bottomley v. Squire.* May 30, 31, 1855.

DISMISSING BILL FOR WANT OF PROSECUTION AS AGAINST DEFENDANT NOT REQUIRED TO ANSWER. — TIME TO AMEND.

*A defendant was served with a copy bill on February 1, not being required to answer,*

fore mentioned shall be upon a case to be stated by the parties (and in case of difference to be settled by the Court or a Judge of the Court appealed from) in which case shall be set forth so much of the pleadings, evidence, and the ruling or judgment objected to, as may be necessary to raise the question for the decision of the Court of Appeal."

<sup>1</sup> Which enacts, that "the appeal hereinbe-

and appeared on February 9. An order for the production of documents was served on May 7, and on the 14th an affidavit of such documents was filed and notice thereof given to the plaintiff on the following day, together with notice of motion to dismiss for want of prosecution, under the 29th Order of August 7, 1852, and an order was made: Held, on appeal from Vice-Chancellor Kindersley, that the motion was regular, but leave was given to amend on payment of costs, under the discretionary power in Order 29.

THIS was an appeal from the decision of Vice-Chancellor Kindersley refusing leave to amend the bill in this case, and dismissing it for want of prosecution as against a defendant, who was not required to answer. The bill was filed on February 1 last, and the defendant appeared on February 9, and was served with a copy order to produce documents on May 7, and on May 14, she filed an affidavit with a list of such documents, and on the following day gave notice thereof to the plaintiff, together with notice of motion to dismiss the bill for want of prosecution, under the 29th Order of August 7, 1852,<sup>1</sup> and on an order being made and leave to amend the bill having been refused, this appeal was presented.

*F. S. Williams* in support, cited *Dalton v. Hayter*, 7 Beav. 589, and referred to the 14th Order of May 8, 1845, which directs, that "the times of vacation are not to be reckoned in the computation of the times appointed or allowed for the following purposes:—1. Amending or obtaining orders for leave to amend bills," and to Order 118, which directs, that "a defendant is not to be at liberty to move to dismiss a bill for want of prosecution until after the expiration of the time within which a plaintiff may obtain an order to amend such bill."

*Hadden*, contra.

The Lords Justices said, that the 29th Order of August 7, 1852, gave the Court a discretion, and the order of the Vice-Chancellor would be varied by giving leave to amend, but upon payment of costs of both motions.

<sup>1</sup> Which directs, that "a defendant to a suit commenced by bill, who shall not have been required to answer the bill, and shall not have answered the same, shall be at liberty to apply for an order to dismiss for want of prosecution, at any time after the expiration of three months from the time of his appearance, unless a motion for a decree or decretal order shall have been set down in the meantime, or the cause shall have been set down to be heard; and the Court may, upon such application, if it shall think fit, make an order dismissing the bill or make such other order or impose such terms as may appear just and reasonable."

Vice-Chancellor Stuart.

*Cochrane v. Phillips*. May 22, 1855.

EQUITY JURISDICTION IMPROVEMENT ACT.  
—BANKRUPTCY AFTER ANSWER.

A defendant became bankrupt after answer, but before decree in a suit, and no further answer was required from his assignees; a supplemental order was made under the 15 & 16 Vict. c. 86, s. 52, as against the assignees.

THIS was an application under the 15 & 16 Vict. c. 86, s. 52, for a supplemental order as against the assignees of the defendant, who had become bankrupt after answer, but before decree. No further answer was required from the assignees.

*G. Lake Russell*, in support, cited *Lash v. Miller*, reported ante p. 55.

The Vice-Chancellor granted the application.

Vice-Chancellor Wood.

*James v. Harding*. May 30, 1855.

FORECLOSURE SUIT.—ASSIGNMENT AFTER DECREE.—SUPPLEMENTAL ORDER.—COSTS.

After decree in a foreclosure suit, the plaintiff assigned. A supplemental order was made under the 15 & 16 Vict. c. 86, s. 52, but on payment by the plaintiff of all the costs relating thereto.

THIS was an application under the 15 & 16 Vict. c. 86, s. 52,<sup>1</sup> for a supplemental order in

<sup>1</sup> Which enacts, that "Upon any suit in the said Court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive or of the usual supplemental decree may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability; and an order so obtained, when served upon the party or parties who according to the present practice of the said Court would be defendant or defendants to the bill of revivor or supplemental bill, shall from the time of such service be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the existing practice of the said Court; and such party or parties shall thenceforth become a party or parties to the suit, and shall be bound to enter an appearance thereto in the office of the Clerks of Records and Writs, within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or order of the Lord Chancellor, provided that it shall be open to the party or parties so served, within such time after service as shall be in that behalf prescribed by

this foreclosure suit upon the assignment by the plaintiff after decree of the mortgage debt and interest together with the decree and all principal, interest, and costs to be thereby recovered and all benefit thereof.

*J. T. Humphrey* in support.

The *Vice-Chancellor* said, that an order might be taken as asked, but that all the costs incident thereto must be paid by the plaintiff.

### Court of Queen's Bench.

*Read v. Hoskins.* June 1, 2, 1855.

**CHARTER PARTY.—DISSOLUTION OF, BY DECLARATION OF WAR.—PLEA.**

*In an action to recover damages for the breach of a charter-party, whereby the defendant undertook to go to Odessa, &c., he pleaded that by reason of the declaration of war he was unable to fulfil the contract without trading with the Queen's enemies: A demurrer to the plea was overruled.*

THIS was an action to recover damages for the breach of a charter-party whereby the defendant undertook to go to Odessa, or some other Russian port as the master should be directed on arriving at Constantinople, and there take in a cargo of wheat. On the arrival of the vessel at Constantinople, she proceeded to Odessa, but was unable in consequence of the war to load a cargo. The plea alleged that the plaintiff and defendant were British subjects, and that the ship was a British chartered ship and had no license from her Majesty to take in a cargo at Odessa, and that after it arrived there and before the laying days were expired, hostilities commenced between this country and Russia, whereof the defendant had notice and could not take in a cargo of wheat without trading with the Queen's enemies.

*Mansel* in support of a demurrer to this plea; *Willis*, contra.

*Cur. ad. vult.*

The *Court* said, that the contract had been dissolved before any breach thereof by the defendant and without any default on his part, by the declaration of war. The defendant was therefore entitled to judgment.

any general order of the Lord Chancellor, to apply to the Court by motion or petition to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill, stating the previous proceedings in the suit and the alleged change or transmission of interest or liability, and praying the usual relief consequent thereon: Provided also, that if any party so served shall be under any disability other than coverture, such order shall be of no force or effect against such party until a guardian or guardians *ad litem* shall have been duly appointed for such party, and such time shall have elapsed thereafter as shall be prescribed by any general order of the Lord Chancellor in that behalf."

### Court of Exchequer.

*In re George v. Semow.* June 2, 1855.

**COMMITMENT ON JUDGMENT SUMMONS, ALTHOUGH DISCHARGED AS INSOLVENT.**

A *habeas corpus* was refused to discharge the defendant, who was in custody under the 9 & 10 Vict. c. 95, on a judgment summons, although he had been discharged by the Insolvent Debtors' Court, and had inserted the judgment debt in question in his schedule.

THIS was a motion for a writ of *habeas corpus* to discharge the defendant to this point, in the Rochester County Court, out of custody, on the ground that he had been previously discharged by the Insolvent Debtors' Court, having included in his schedule the judgment debt in question, and for nonpayment of which he had been committed on a judgment summons, under the 9 & 10 Vict. c. 95. A similar application had been made to and refused by the Courts of Queen's Bench and Common Pleas, (reported *ante*, p. 92).

*G. Francis* in support.

The *Court* said, that until the decision of *Abley v. Dale*, 11 C.B. 378, was questioned in a Court of Error, it must be followed, and the rule would therefore be refused.

### Crown Cases Reserved.

*Regina v. Smith.* June 2, 1855.

**INDICTMENT FOR RECEIVING STOLEN GOODS.—MANUAL POSSESSION.**

*Manual possession is not necessary to support an indictment for receiving stolen property; it is sufficient if the jury find that the prisoner has the control of the stolen article, although in the possession of a third party.*

THIS was an indictment against the prisoner for having knowingly received a stolen watch, and on the trial before the Recorder at the Brighton Sessions, it appeared that the prosecutor was with the prisoner and other persons in a public-house, and that having had his watch stolen he charged the prisoner with the theft, but although he was partially searched by a policeman the watch was not found. The prisoner afterwards asked the prosecutor whether he would give a reward to have back his watch, and he said he would get back the watch; and he then went with a girl to a room where a man named Hollands was, and the girl took the watch from the table, the prisoner telling her to get the reward, and they afterwards came for the reward, when the prosecutor gave the prisoner half-a-crown. The jury found the prisoner guilty, as the prisoner had the control of the watch, although it might be in the possession of Hollands.

*Cressy* for the prisoner.

The *Court* said, that manual possession was not necessary, and there was ample evidence for the jury. The conviction would be affirmed.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“Still attended at your service.”—*Shakespeare.*

SATURDAY, JUNE 16, 1855.

### REMUNERATION OF SOLICITORS.

#### REVISION OF CHANCERY COSTS.

OUR readers in general will be glad to learn,—many of them we know are already personally acquainted with the fact,—that the *Lord Chancellor*, to whom several appeals have from time to time been made by the Council of the Incorporated Law Society, has requested *Lord Justice Turner*, in conjunction with *Vice-Chancellor Wood* and *Mr. Walton*, one of the Masters of the Court of Exchequer, and *Mr. Follett*, one of the Taxing Masters in Chancery, “to look into the present Scale of Fees in the Court of Chancery, with a view to its revision, where on investigation it may require amendment.”

The Lord Chancellor has placed in the hands of the Commissioners a printed paper transmitted to him by the Incorporated Law Society, and which they have read and considered.

We subjoin a copy of that paper, but which, having been prepared some time ago, will require revision, and some of the suggested items increased in amount, and others added.

The Commissioners have in the first instance deemed it necessary to procure a statement of the present allowances made on the taxation of the costs under the several orders of Court, and they have printed such tables of existing allowances. It is also stated in the circular, that in addition to these stated and settled fees, *other allowances* to a large extent are, in practice, always made on the taxation of costs.

We are not, however, favoured with a statement of these “other allowances,” and it will be very desirable to ascertain

and consider them. Our impression has been, that the Taxing Masters have generally declined to exercise any discretion in regard to charges for special instructions, attendances, and correspondence.

It is stated in the circular, that some of the proposed additional charges in the paper of the Incorporated Law Society, are in respect of business for which allowances are already made. This may be so; but such “allowances already made” are (it is submitted) inadequate in amount, and the additions suggested are to increase such allowances to a just and proper sum.

The several societies and individual solicitors to whom the circular and scale of fees have been sent, are requested to furnish the Commissioners with a detail of any alterations or additions to the scale of fees contained in the statement transmitted. They are also requested to suggest any specific amendments in the mode of assessing solicitors’ charges which ought to be made, “having regard to what may be required either by the convenience of the Profession, or in justice to its members.”

An economical and moral hint (if we may so call it) is given in the conclusion of the circular:—the solicitors are reminded, “that the recent alterations in the practice have been made for the express purpose of *reducing the expense* to the suitors at the proceedings in the Court;” and it is further intimated, “that great as is the interest which the public has in the maintenance of a respectable body of practitioners, the benefit which it thus derives must not be pressed too strongly.”

We presume the object of this hint is to induce the solicitors to be as moderate as they can in their suggested improvements of the items, of professional charge. Let it

be recollected, however, that the "express purpose of reducing the expense to the suitors,"—whether by the Legislature or the Judges,—must not be permitted to operate unjustly to the practitioner. The labourer is worthy of his hire, and skill is entitled to its reward. The legislative and judicial reforms have deprived the solicitor of a large part of the emoluments which were earned by his clerks, and remunerated him to a certain extent for his personal labour and responsibility. Unless an arrangement can be effected, we fear the time is not far distant when the present race of solicitors in Chancery will cease to practise, and a different class of men take their place, who may be willing to accept emoluments reduced almost to a County Court scale. We trust the Commissioners, and finally the Lord High Chancellor, will come to a conclusion that may avert consequences which, we apprehend, will be alike injurious to the suitors and to the present high character of the administration of justice in our Courts of Equity.

The following is the paper referred to :—

**ALTERATIONS SUGGESTED BY THE COUNCIL OF THE INCORPORATED LAW SOCIETY.**

*General Suggestions.*

1. That consideration be given to any special agreement for remuneration which may have been entered into by competent parties.

2. That the officer taxing or ascertaining the solicitor's remuneration shall have regard to the actual skill and labour employed and responsibility incurred, and not merely to the length or multiplicity of the written forms of proceeding, and make such allowances to the solicitor as his services fairly deserve, although no specific fee applicable to such service may be stated in the scale. See 8 & 9 Vict. c. 124.<sup>1</sup>

<sup>1</sup> This proposal to give greater discretionary powers to the Taxing Masters is not new; and it will no doubt meet with their full concurrence.

It was with this view, that the qualification for the office they hold, and its liberal salary, were fixed in the Statute of 1842, in consequence of representations made to the late Master of the Rolls by this Society, founded on the Report of a Committee, of which some of the present Taxing Masters were then members, to the effect, "That a far more discretionary system of remuneration was absolutely required for the interest of the suitor, and to enable the necessary simplifications of procedure to be carried out; that such discretion could only be exercised satisfactorily to the Profession by officers chosen from its head members, and that to induce solicitors in that position to leave their Profession, a high rate of salary would be required."

3. That in carrying out the second direction, all important attendances and correspondence in the progress of a cause or matter, including, in country cases, important letters between the country client and town agent, be allowed.

4. That a fee on ending be allowed for the term in which a cause or matter shall be brought to a conclusion, the amount to be in the discretion of the proper officer, who shall have regard to the importance of the case, the amount of property involved, and the skill and diligence exerted by the solicitor.

5. That interest at 4 per cent. per annum be allowed to the solicitor on all disbursements from the end of the year in which the same shall have been made.

6. That (for avoiding frequent references for taxation, and in order that the officers before whom business is done may fix the proper remuneration), the chief clerks of the Judges may be authorised, as far as practicable, to fix the sum to be paid for costs in any matter transacted in the Judge's Chambers.

*Specific Fees.*

That the following fees and allowances be made, viz. :—

*Instructions.*

That the solicitor be allowed a discretionary fee as instructions for all important proceedings, and that the proper officer be authorised to allow an increase on the present fixed fees for instructions in all cases, according to the importance of the business.

*Drawing and preparing Documents.*

That the fee for drawing documents, statements, pedigrees, and affidavits be 1s. per folio, exclusive of a fair copy.

*Perusing, &c.*

£ s. d.

For perusing the answer of the defendant . . . . . 0 13 4

And if exceeding 30 folios, at the rate of 6s. 8d. for every additional 30 folios completed.

For perusing documents and evidence of the opposite party, for every quantity exceeding one sheet and not exceeding three sheets . . . . . 0 6 8

And at the same rate for every quantity exceeding three sheets.

For examining or checking accounts not prepared by the solicitor, or for time necessarily occupied preparatory to attendance before a Judge, chief clerk, or Master, not covered by the last item, 10s. per hour.

That the proper officer shall have a discretionary power of increasing the fee now allowed for perusing the plaintiff's bill, in cases of importance and difficulty.

*Service of Process, Summonses, Orders, Notices, &c.*

The charge now allowed for service on

The Masters of the Courts of Common Law have discretionary powers of a similar nature, which they find no difficulty in executing.

the solicitor of summonses to extend to all proper notices, including notice of filing affidavits and of adjournments of summonses.

**Attendances.**

For attending the printer with bill or claim, and afterwards with revise . . . . .

£ s. d.

0 6 8

Attendances on settling answers . . . . .

0 13 4

The like on special affidavits . . . . .

0 6 8

Attending filing affidavits, and delivering copies . . . . .

0 6 8

Attending to examine copies of bill and interrogatories, and get them marked as office copies . . . . .

0 6 8

For the attendance in Court, in cases of importance, of solicitors' clerks, in addition to the solicitor's attendance . . . . .

0 6 8

For attending the *vidæ voce* examination of witnesses were no counsel employed . . . . .

1 0 0

The like where counsel employed . . . . .

0 13 4

For every additional hour after the first two hours . . . . .

0 10 0

Attending at Record Office to bespeak office copies of proceedings, and afterwards for the office copy . . . . .

0 6 8

For attending the Record clerk for certificate, and afterwards setting down cause . . . . .

0 6 8

For attending Accountant-General, bespeaking certificates of funds in Court, and afterwards for the same . . . . .

0 6 8

For time properly employed by the solicitor personally, 10s. per hour, and at the rate of 3l. 3s. per day when absent from his place of business.

That the fees under this head, and also the fees now allowed for attending Court on the hearing of a cause, claim, petition, or motion—for attending before the Judge or his chief clerk—for attendance on the registrar, settling orders and decrees, and the minutes thereof—may be increased in the discretion of the proper officer, according to the time occupied and the importance of the case, and the responsibility incurred.

**Costs between Party and Party.**

That in the taxation of costs between party and party, all costs be allowed, which, on a taxation of costs between solicitor and client, to be paid out of a fund in Court, would be held to have been properly incurred.

## COUNTY COURTS

### PRACTICE OF THE COURTS.

THE Commissioners' Report comprises the following statement of the practice of the County Courts:—

The practice under the legal jurisdiction depends partly on the express provisions of the

Statutes regulating the County Court; partly on certain rules made by a Committee of County Court Judges, and sanctioned by a Chief Justice and two other Judges of the Superior Courts; and partly, where the case is not provided for by the Statutes or rules, on the general principles of practice prevailing in the Superior Courts, which are applied by the Judges to the proceedings of the Court.

As the practice varies to some extent according to the amount of the claim, it will be convenient to state the course of proceeding; first, where the claim does not exceed 20l.; secondly, where it does exceed 20l., but does not exceed 50l.; thirdly, where the claim is unlimited in amount or the matter in dispute involves a question not within the ordinary jurisdiction of the Court.

First, where the claim does not exceed 20l.

The proceedings in these cases commence by the entry of a plaint, which the clerk of the Court records in a book kept specially for that purpose. The plaintiff, in order to enter his plaint, states *vidæ voce*, or in writing, to the clerk his own name, addition, and residence; and the name, addition, and residence of the defendant, or such other descriptions as will serve to identify him. He then relates the cause of complaint, and if he demand a sum exceeding 40s. he gives one or more copies of the particulars of his claim, according to the number of the defendants, besides one copy which is to be filed by the clerk. The proper fees for issuing and serving the summons must be paid at the time of entering the plaint.

A summons stating in short and popular language the substance of the cause of action (with particulars, where required, attached), is issued to the defendant, commanding him to appear at a Court at least ten clear days after the service of the summons to answer the plaintiff in the matter of dispute.

This process must be served by the high bailiff of the Court, or his assistant personally, or in some other way, from which it may reasonably be inferred that it has come to the knowledge of the defendant, in due time before the holding of the Court. If the defendant reside in a foreign district, the process is transmitted by the clerk of the home Court to the high bailiff of the foreign Court, together with a statement of the proper amount of the fees for service in the foreign district, and which have already been paid at the home Court. On production of this document, he will at the end of the quarter be entitled to receive from the treasurer the amount of those fees. The object of thus withholding the immediate payment of the fees is, that if due diligence have not been used in serving the process, the officer may be deprived of his fees by the treasurer, at the instance of the Judge of the home Court.

If the defendant think proper, he may at this stage of the proceedings enter with the clerk, a confession of the claim, and on it, the Judge may on the hearing day pronounce



judgment in the same manner as if he had tried the cause; or both parties may agree on the terms, on which, the cause shall be settled, and on due proof of such agreement before the clerk, he may enter judgment in conformity with it, and the judgment may be enforced in the same manner as one pronounced by the Judge.

At this period, or subsequently, the cause may, with the consent of the parties, be referred to arbitration by order of the Judge, and the award afterwards entered as the judgment in the cause. Proper powers of supervising the proceedings of the arbitration are conferred on the Judge.

If the defendant intend to deny the plaintiff's claim, or to insist on any objection other than one or all of the six special defences hereafter mentioned, it is not necessary for him to give notice of his intention so to do, but he may, at the hearing day, compel the plaintiff to prove his case, may produce evidence in answer, and take such objections in point of law as he thinks available. It is competent for him to pay into Court such sum of money as he thinks proper, in satisfaction of the plaintiff's demand, together with a proportionate amount of fees of Court down to the time of making the payment. If his defence be a tender, he need give no previous notice of it, but may avail himself of it at the hearing, on paying into Court, without costs, the sum alleged to have been tendered. If, however, his defence be founded totally or partially on a set-off, infancy, coverture, a Statute of Limitation, bankruptcy, or insolvency, he must give five clear days' notice of that defence. Subject to this rule, it is competent for him to avail himself at the hearing of any defence, whether it traverses, or confesses and avoids, the plaintiff's case. No further pleading or notice is necessary; nor is there any formal joinder of issue.

If either party be desirous of having the cause heard before the Judge, assisted by a jury, he may claim that privilege as a matter of right, where the claim exceeds *5l.*, and by permission of the Judge, where it does not exceed that sum, a jury may be summoned. The jury consists of five persons, who must give a unanimous verdict. Two clear days' notice of requiring a jury must be served on the clerk, and *5s.* deposited with him to pay the jury. The jurymen are selected by the clerk from a list of qualified persons resident within the district, and that list is supplied to him by the sheriff or other proper officer. With few exceptions, however, the cause is tried by the Judge, without a jury.

On the appearance day, the defendant either appears or makes default. We will consider the practice, first, where both parties appear; secondly, where neither appears; and thirdly, where only one party appears.

If both parties appear, the Judge, either without or with a jury, as the case may be, proceeds to hear the cause. Considerable powers of amendment are possessed by him, but the plaintiff is confined to the cause of

action stated in the summons. If it appear desirable to the Judge, he is at liberty to grant time to either party to proceed in the prosecution or defence of the suit, or to adjourn the further hearing of the cause to any subsequent time. It is competent for the Judge to non-suit the plaintiff on sufficient grounds. When the case on both sides is closed, the Judge, if unassisted by a jury, decides both on facts and law; if assisted by a jury, he directs them in point of law, and they decide on the facts. Judgment is then given for the plaintiff or defendant, and entered on the minutes of the Court. The Judge also directs the mode of payment of the sum for which judgment is given, and an order is drawn up in conformity with that direction. The order generally requires the unsuccessful party to pay the amount of the judgment either at once or by instalments into Court. The Judge has power to direct the payment to be made to the successful party. This, however, is very rarely exercised, and, having regard to the other arrangements of the Court, would be inconvenient. A copy of this order is served on the unsuccessful party by post, but proof of its having reached him is not a condition precedent to issuing execution in case of non-payment. The object of the order is that the party may know specifically what and when he is required to pay. A very large majority of orders are for payment by instalments.

The costs abide the event, unless the Judge otherwise orders. This, however, does not apply to costs for professional assistance.

Should either party be dissatisfied with the judgment, he may, within a limited time fixed by the practice of the Court, move for a new trial. This, the Judge may grant or refuse at his discretion.

If at the hearing day, neither party appears, the cause is struck out of the list.

If the plaintiff only appears, proof is given of the service of the process on the defendant, and if no satisfactory reason be assigned for the defendant's absence, the Judge may proceed to hear the cause *ex parte*, and pronounce judgment accordingly. On sufficient cause shown, he may afterwards grant a new trial.

If the defendant only appears, but does not admit the demand, the Judge may award him his costs. If, however, he does admit the demand, and pays the proper fees of Court, judgment may be given for the plaintiff in the same manner as if the plaintiff had appeared.

If at any time in the course of the proceedings, it appears desirable to adjourn them, the Judge is at liberty to do so.

The judgment may be enforced by execution against the goods, or, in certain cases hereafter mentioned, by the commitment of the defaulting party for a period of 40 or any less number of days. The adoption of one of these proceedings does not prevent the creditor from having recourse to the other. The judgment, however, cannot be made available against land.

Under the warrant of execution, the high

bailiff is empowered to seize all the goods and chattels of the judgment debtor, except his wearing apparel and bedding, tools, and implements of trade, to the value in the whole of 5*l*. The goods cannot be sold without appraisement, and until after the elapse of five days from the time of seizure, unless of a perishable nature, or the defendant make a written request for an earlier sale. The high bailiff may also seize money, bank notes, cheques, or securities for money belonging to the debtor, and may hold any such securities in order to satisfy the judgment, and the creditor may sue in the name of the debtor on such securities. The proceeds realised under the execution are paid by the high bailiff into Court, after deducting certain charges for appraisement and possession.

If the defendant's goods are in a foreign district, the warrant is transmitted to the clerk of the foreign Court, together with a statement of the bailiff's fees on the execution. This warrant is then sealed with the seal of the foreign Court, and issued to the high bailiff of that district. The proceeds realised there by the execution are paid into the foreign Court. The clerk then transmits a particular of the execution to the clerk of the home Court, debiting himself with the sum received under the execution. On application to the clerk of the home Court, he pays to the execution creditor the sum with which the clerk of the foreign Court has debited himself. This payment is afterwards allowed him in his accounts by the treasurer at the audit. By this means, the inconvenience and risk of transmitting money from one part of the kingdom to the other is avoided.

If, when the bailiff levies, he receives notice from the landlord of rent in arrear, he must give preference to that claim to a certain amount, limited by the period of letting, but in no case exceeding one year's rent, and may then levy on the residue for the judgment debt.

Should any claim be made by third parties on the goods seized, the bailiff can compel the execution creditor and the claimant to interplead, and the Court may dispose of the matter in dispute.

An order for commitment cannot be obtained as a matter of course, but only on a special application to the Judge in Court. This order may be obtained at the hearing immediately after judgment, when the debt appears to have been fraudulently contracted, or the defendant has been guilty of some other misconduct specified in the Act of Parliament, and dwells or carries on business in the district of the Court; or it may be obtained on the hearing of a summons taken out in the district where the defendant dwells or carries on his business at the time of applying, without regard to the district in which the judgment was obtained. The summons requires the debtor to appear and be examined, and intimates that if he do not appear, the Court may proceed in his absence. In addition to the other grounds of

commitment already referred to, is that of non-payment of the demand, if the defaulter be possessed of means to pay. If the defendant undergo the imprisonment awarded under the order for commitment, the debt is not satisfied or extinguished, and he may, at the discretion of the Judge, in certain cases of subsequent default, be committed for any number of successive periods, not exceeding 40 days each, until payment is enforced. Moreover, it seems, the debtor is not protected from this proceeding by a discharge under an Insolvent Act, and no protection, order, or certificate granted by any Court of Bankruptcy, or for the relief of insolvent debtors, is available to discharge a party from such a commitment.

When the defendant removes from the home district, the process is transmitted, like other process, to the high bailiff of the foreign district.

The warrant of commitment orders the bailiff to convey the body of the debtor to prison. This prison is the common gaol of the county or place in which the defendant is resident, and which is used for the confinement of debtors in execution under the process of the Superior Courts, or in some other place of confinement in the county allowed for that purpose by order of the Secretary of State. The Secretary of State has, however, in very few instances exercised his power of allowing places of confinement other than the common gaol of the county to be used for the purposes of the County Court.

It is competent for the Judge, on sufficient cause shown, to stay a judgment, or an execution, but neither can be stayed or reversed by writ of error or supersedeas thereon.

Next as to the practice, where the claim exceeds 20*l*. but does not exceed 50*l*.

In these cases, the practice and proceedings are the same in all respects, except that if either party be dissatisfied with the determination or direction of the Court in point of law or upon the admission or rejection of evidence, he may appeal to one of the Superior Courts of Common Law at Westminster, on depositing the amount of the judgment, or on giving security, to be approved by the clerk of the Court, for the amount of the judgment and costs, or costs only, as the case may be. Of this appeal, notice must be given to the opposite party within 10 days after the determination or direction of which complaint is made. A case containing a statement of the facts is then prepared by the parties, which must be signed by the Judge. If the parties cannot agree, the Judge settles the case. It is then transmitted by the appellant to the proper officer of the Court selected as the Court of Appeal. The appeal is set down for argument, and is disposed of as part of the ordinary business of the Court. The Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, and may make such order with respect to the costs of the appeal as

it thinks proper. Those orders are final. The Court of appeal sometimes remits the case to the Judge for the purpose of amendment.

The jurisdiction in cases where the claim exceeds the sum of 50*l.* or where questions not within the ordinary jurisdiction of the Court are submitted to its decision is only given by consent.

The mode of giving this consent is by the parties or their attorneys signing a memorandum of agreement, in which they state that they know the cause of action to be above the sum of 50*l.*, or that the title will come in question in the action. This memorandum is filed with the clerk of the Court at the time of entering the plaint. The proceedings in the action are then the same, and conducted in the same manner as in the two classes of claims already mentioned.

It is to be observed that all local actions brought by consent within the jurisdiction of the County Court, must be brought and tried in that district in which the lands, tenements, or hereditaments, or some part of them, in respect of which the action is brought are situated.

#### REPLEVIN.

In this peculiar form of action, in cases of distress for rent in arrear or damage feasant, a new mode of proceeding has been introduced, compounded partly of the mode formerly existing and partly of certain conditions introduced by the Statute. Where the distress has been made, either for rent or for damage, the practice still continues of applying to the sheriff or the replevin clerk to replevy, and a bond with sureties in the usual form is still required, except, that part of the condition is to prosecute the suit in the statutory County Court. The replevisor must then in fulfilment of the condition of his bond enter his plaint in the County Court in the district wherein the distress was taken. On entering the plaint, the plaintiff must give to the clerk a sufficient number of copies of particulars of the goods and chattels, which he alleges to have been wrongfully taken. A summons is then issued in the usual way, and the case proceeds to hearing like any other claim. A difference resulting from the nature of the proceeding of course exists in the judgment. If the distress was for rent in arrear, the judgment, whether for plaintiff or defendant, is the same as may be obtained in the Superior Courts of Common Law. If the distress was for damage feasant, the judgment for the plaintiff is the same as in the Superior Courts; but if the defendant succeed, the Judge or jury may assess the amount of damages done by the plaintiff's trespass, and the judgment may be in the alternative for a return, or for the damage so assessed. The decision of the Court, whatever the amount of property distrained or whatever questions of law arise in the course of the inquiry, is final.

This is the course of proceeding in actions of replevin, where the case is left to the decision of the County Court.

It is, however, competent for either party to remove the plaint into a Superior Court on giving certain notices prescribed by the rules of the Court, and on making a declaration at the hearing that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise is in question, or that the rent or damage in respect of which the distress has been taken was more than 20*l.*, and on becoming bound with two sufficient sureties in such sums as to the Judge shall seem reasonable, regard being had to the nature of the claim and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit with effect and without delay, and to prove before the Court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than 20*l.* On compliance with these conditions, the cause may be removed into any Court competent to try the same in such manner as hath been accustomed. The cause is removed by *certiorari* instead of *recordari facias loquelam*; the statutory County Court, unlike the common law County Court, being a Court of Record.

#### EJECTMENT.

Although the general language of the proviso contained in sect. 58 of the 9 & 10 Vict. c. 95, excludes actions of ejectment, one particular class of ejectments is by the express provisions of sect. 122 brought within the jurisdiction of the Court. That class is ejectment for the recovery of a house, land, or other corporeal hereditament, the annual value or rent of which does not exceed 50*l.*, from any tenant whose interest has ended, and who has paid no fine.

A plaint and summons are entered and served in the usual way or in the mode prescribed by the Statute, and if the Judge be of opinion that the tenancy has been duly determined, and the tenant or sub-tenant refuse to give up possession of the premises, the Judge may issue his warrant to the high bailiff requiring him to give possession to the landlord within ten clear days from the date of the warrant.

If the party against whom the warrant is issued be desirous of raising the question in another Court, as to whether the landlord had, at the time of suing out the warrant, lawful right to the possession, he may stay proceedings on the warrant by becoming bound, with two sufficient sureties to be approved by the clerk of the Court, in such sum as to the Judge shall seem reasonable, regard being had to the value of the premises and the probable costs of the action, to sue the person by whom such warrant was sued out with effect and without delay and to pay costs in certain events: then proceedings will be stayed until judgment has been given in such action, and if a verdict pass

for the plaintiff, the verdict and judgment thereon will supersede the warrant. If, however, the tenant should not proceed or should fail in his action, the bond becomes forfeited, and proceedings thereon may be had and the warrant enforced.

#### PROTECTION CASES.

In cases within the Protection Acts, the clerk acts as official assignee and registrar, and is bound to present his accounts to the treasurer to be audited, and to pay over to him any balance remaining in hand. The high bailiff acts as messenger.

The practice of the Court for the relief of insolvent debtors in London in cases under the Protection Acts, the 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, is adopted in the County Court so far as it is applicable.

#### PRACTICE IN OTHER CASES.

With regard to the jurisdiction in Customs cases, nuisances, and arresting ships, no special practice has at present been established.

#### EQUITABLE JURISDICTION.

In seeking to enforce a claim for an unliquidated balance of a partnership account, or a distributive share under an intestacy or a legacy, the same practice prevails as in endeavouring to recover any other pecuniary demand.

The practice with reference to applications under the Act relating to Charitable Trusts, depends on the provisions of the Statute, on certain rules framed by the Lord Chancellor, in pursuance of a power contained in the Charitable Trusts Act, 1853, and on the general practice of the Court.

The persons entitled to apply to the County Court under the jurisdiction conferred by the Act are, her Majesty's Attorney-General, the trustee or one or more of the trustees of any charity, or the person or persons administering, or claiming to administer, or interested in the charity which is the subject of the application, or any two or more of the inhabitants of any parish or place within which the charity is administered or applicable. This distinction, however, exists between applications by the Attorney-General and those by any of the other persons before mentioned; that the former may apply to the Court at his discretion, but the latter require the sanction of the Charity Commissioners for the purpose.

It will be convenient in describing the practice of the Court on these applications to state; 1st, that which applies to private persons; and, 2nd, that which applies to the Attorney-General.

The person who is desirous of applying to the County Court for relief having obtained the proper order or certificate from the Charity Commissioners, must file it with the clerk. That officer will then, at the instance of the applicant, and subject to the discretion of the

Judge, summon or give notice to the proper persons to appear or attend proceedings at an appointed Court. These summonses and notices are served by post, unless the Judge otherwise directs. On the appointed day, the persons summoned to appear, or who have received notice to attend, or any of the persons who are entitled to apply under the Act, may appear and oppose the application. The Judge then proceeds to make such order in the matter as to him seems just. This order, together with a copy of the other proceedings, is then transmitted to the Charity Commissioners. If it meet with their approval the order is final, unless some person authorised to make an application under the Statute is desirous of appealing against the order.

In such a case, the intended appellant must, within a calendar month after making the order, give notice in writing to the Commissioners and to the Court, of his wish to appeal, stating the grounds of his intended appeal. If the Commissioners think that the appeal should be entertained, they give a certificate to that effect, and proceedings on the order are suspended during such time as the circumstances require. The Commissioners may require the appellant to join in a bond with two sufficient sureties to be approved by the clerk of the County Court, to the treasurer of the Court, or such other person as they think fit, in such sum as they think reasonable, to pay such costs of the appeal as the appellate Court shall order; and also, if they think fit, to indemnify the charity against the costs and expenses of or attending such appeal. On compliance with the requisition of the Commissioners, an order is made allowing the appeal. Within three calendar months, the appellant must present a petition to the Court of Chancery praying such relief as the case may require. Upon the hearing of the petition, the Court may confirm, vary, or reverse the order appealed against, or may remit the order to the County Court by which it was made, with or without any declaration of the Court of Chancery in relation to it; or the Court may dispose of the matter of the order as in the case of a suit regularly instituted, or a petition. If the appellant do not proceed within three calendar months from the time at which the appeal is allowed, the order of the County Court becomes final. If the costs adjudged by the appellate Court to be paid by the appellant are not paid, the bond may be put in suit, and the sum recovered on it applied to indemnify the charity or the person damaged, as the case may require, and as the appellate Court thinks right.

The Attorney-General's power to proceed *ex officio* continues in the same manner as if the Act had not been passed; and he may, without the sanction of the Charity Commissioners, make application to the County Court in such matters. On making such an application, he must lodge with the clerk a statement similar to the Commissioners' certificate or order. On the production of this statement, the clerk will take the same steps for the purpose of bring-

ing the cause to a hearing, as on the application of a private person. At the hearing, the same proceedings as in other cases take place. The Judge having heard the application, pronounces his judgment and makes his order. Against this order, the Attorney-General, acting *ex officio*, may, at any time within three calendar months after the order has been made, lodge, commence, and prosecute an appeal, without giving notice or becoming bound, as in the case of private persons, and the County Court is thereupon bound to make an order allowing the appeal. The subsequent proceedings on the appeal are the same as in other cases.

It is to be observed that no deputy Judge is allowed to dispose of these matters, and a jury cannot be summoned to dispose of the facts.

The clerk enters the proceedings in each case under its respective title, in a book kept for that purpose, and the various documents lodged with him are filed.

No special practice has yet been established with respect to the Friendly, Industrial, and Provident Societies Act, the Literary and Scientific Institutions Act, or the Succession Duties Act.

#### ABSCONDING DEBTORS.

Where any person is indebted in a sum to the amount of 20*l.* or more, and he is about to leave the country for the purpose of avoiding or delaying his creditors, it is competent for the creditor to apply, under the 14 & 15 Vict. c. 52, to the Judge of any County Court, except the Judges acting in Middlesex and Surrey, for an order to arrest the debtor. If the Judge be satisfied by affidavit that the debt exists, and that the debtor is about to leave the country for the purpose of avoiding or delaying the creditor, he may issue his warrant directed to the high bailiff, for the purpose of arresting the debtor. The high bailiff may execute the warrant in any part of England at any time within seven days after its date, including the day of its date. This proceeding by arrest is only auxiliary to proceedings in the Superior Court. If proceedings are not taken in conformity with the provisions of the Statute, the warrant does not operate as a protection to the party on whose behalf such warrant has been issued, but is wholly void.

#### COMMON LAW PROCEDURE ACT.

The Common Law Procedure Act, 1854, having been in operation only a few weeks, no practice has at present been established with respect to proceedings under it.

#### CHANCERY.

The power which the Court of Chancery possesses of availing itself of the assistance of the County Courts in certain cases, does not appear ever to have been exercised, and the

jurisdiction under the Joint-Stock Company's Winding-up Act has been very rarely brought into operation. No peculiar practice, consequently, has been established with reference to those matters.

#### INSOLVENCY.

In the exercise of the jurisdiction in insolvency, as regulated by the 1 & 2 Vict. c. 110, the clerk of the County Court acts as registrar, and the high bailiff, as messenger.

The course of proceeding is, that the prisoner, in whatever part of England he may be confined, beyond 20 miles from the General Post Office, presents his petition for relief under the 1 & 2 Vict. c. 110, to the Court for relief of Insolvent Debtors in London. The Court in London forthwith makes an order referring the petition for hearing to the County Court, within the district, of which, the insolvent is in custody, and transmits the petition and schedule to the Court for hearing. The insolvent or his attorney delivers all books, papers, and accounts in his possession, and relating to his debts, credits, or estate to the clerk of the County Court. On the usual day (of which due notice is advertised) for hearing insolvency cases, the petition comes on in its order, and the matter is disposed of by the Judge in conformity with the provisions of the Statute. The petition and schedule, together with a statement of what has been done in the matter, are then transmitted to the Court for the Relief of Insolvent Debtors in London, where the proceedings are filed. The Judge may recommend, but it seems cannot appoint the creditor's assignee, though his recommendation is generally confirmed by the Court in London. In other respects, the practice of the Insolvent Court in London is applied to the proceedings in the County Court.

#### JUSTICES OF THE PEACE QUALIFICATION BILL.

THE attention of our readers should be directed to the Bill brought in by Mr. Colvile, Viscount Emlyn, and Mr. Ker Seymour for amending the Laws relating to the Qualification of Justices of the Peace. The 23rd section provides that no *practising* attorney, solicitor, or proctor shall be capable of being a justice of the peace for any county, riding, or division.

It will be recollected that the 6 & 7 Vict. c. 73, s. 33—following the like sections in the former Acts—provided that no attorney or solicitor should be a justice of the peace for any county in England or Wales during such time as he should continue in practice. The 34th section exempted from this prohibition places having justices by charter, namely—cities, towns being counties, Cinque Ports, &c.

The present Bill, it will be observed, extends the prohibition to "ridings or divisions" of counties, and in the schedule the 33rd section of 6 & 7 Vict. c. 73, is repealed, but not the 34th. The 4th clause of the Bill expressly states that the words "county, riding, or division" shall not include any city or town which is a county of itself, and so leaves unaltered the 34th section of the 6 & 7 Vict. c. 73.

The question for the attorneys will be, whether they should not avail themselves of the opportunity afforded by this Bill of discussing the principle of the prohibition against their acting as county magistrates, where they are fully as well qualified to render service to the community as in cities and corporate towns.

The provisions of the Bill are sufficiently important to justify its insertion in our pages. It is as follows:—

### I. Preliminary Provisions.

1. This Act may be cited for all purposes as "The Justices of the Peace Qualification Act, 1855."

2. This Act shall come into operation on the 1st January, 1856.

3. This Act shall extend only to England and Wales.

4. In interpreting this Act, the words "county, riding, or division" shall not include or extend to a city or town which is a county of itself.

### II. Repeal of former Statutes.

5. The several Acts and parts of Acts designated in the schedule hereunto annexed are hereby repealed.

6. The preceding repeal shall not extend to invalidate the operation of the repealed Acts upon matters done, qualifications sworn, rights vested, offences committed, or penalties incurred at the time of the repeal, but as to all such matters the repealed Acts shall continue in force as if this Act had not been passed.

### III. Qualification by Property.

7. No person shall be capable of being a justice of the peace, or of acting as such, for any county, riding, or division, unless he be possessed of one of the following qualifications (that is to say):—

1st. That he be seized or entitled, for his own use and benefit, of or to an estate, legal or equitable, in lands within England or Wales, or in the rents and profits of such lands, which estate shall not be less than for the life of some person then living, or for a term of years, either absolute, or determinable on the life of some person then living; and that such estate be of the clear yearly value of not less than 100*l.* over and above all incumbrances affecting the same:

2nd. That he be possessed or entitled, for his

own use and benefit, at law or in equity, either in perpetuity or for the life of some person then living, or for a term of years, either absolute, or determinable on the life of some person then living, of or to personal estates or effects within England or Wales, or the interest, dividends, or annual proceeds of personal estate or effects; and that such personal estate or effects, interest, dividends, or annual proceeds actually produce the clear yearly income of not less than 300*l.* over and above all incumbrances affecting the same:

3rd. That he be possessed, for his own use and benefit, of a clear yearly income of not less than 300*l.* derived from an office or employment held under the Crown or under some department of the Government, for life, or during good behaviour, or during pleasure, or derived from a pension granted in respect of the previous exercise of such an office or employment:

4th. That he be possessed of more than one of the several kinds of property hereinbefore mentioned, which, although they be singly of insufficient yearly value to create a qualification under this Act, amount in the aggregate to the clear yearly value of 300*l.* over and above all incumbrances affecting the same.

8. No person shall act as a justice of the peace for any county, riding, or division until he has made and subscribed, at some general or quarter sessions of the peace for such county, riding, or division, the declaration following; that is to say,

"I, A. B., do solemnly and sincerely declare, that I am, to the best of my knowledge and belief, duly qualified to act as a justice of the peace for the county [or riding or division] of

within the true intent and meaning of 'The Justices of the Peace Qualification Act, 1855,' and that my qualification arises out of [here let the party state the nature of his qualification, as the case may be. If it arise, either wholly or partially, out of lands, let him state the parish, township, or precinct, and also the county in which such lands are situate; but if the qualification consists, either wholly or partially, of rent, it is sufficient to specify so much of the lands out of which the rent issues as is of sufficient value to answer such rent. Let him state also the estate in such lands, or in the rents or profits thereof, to which he is entitled.]

"[If the qualification arise, either wholly or partially, out of personal estate or effects, let him state of what nature such personal estate and effects are, and where situate, what interest he has therein, and in what securities and in whose name the same are vested.]

"[But if the qualification consist of an office, benefice, or ecclesiastical preferment, it shall be sufficient (notwithstanding that the said office, benefice, or ecclesiastical preferment may be generally included within the meaning of

the word 'land' throughout this Act) to describe the same by its usual name.]”

9. Every such declaration shall be kept by the clerk of the peace among the records of the sessions whereat it was made and subscribed, and he shall supply an attested copy of such declaration to every person demanding the same, and tendering the sum of 2s. therefor; and such attested copy shall, upon its mere production, be admitted in evidence in any Court of Justice or before any person having by law or by consent of parties authority to receive and examine evidence.

10. Any person who shall make and subscribe any such declaration as aforesaid, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor.

11. Any person who shall act as a justice of the peace for any county, riding, or division, without having made and subscribed the said declaration as aforesaid, or without being qualified according to this Act, shall forfeit the sum of 50l.

12. The penalty imposed by this Act shall be recoverable, with costs of suit, in any County Court within the district whereof the offender may reside, at the suit of any person who will sue for the same; and one moiety of the said penalty shall be paid to the treasurer of the County Court wherein the same has been recovered, and be by him paid to the treasurer for the county, riding, or division within which the offence was committed, to be applied in aid of the county rates; and the other moiety, together with all costs of suit, shall be for the sole use of the person who sued for the said penalty.

13. In every such suit the proof of his qualification shall lie upon the person against whom the suit is brought.

14. If the defendant in any such suit shall intend to insist, either wholly or in part, upon any qualification not contained in his declaration, he shall, within seven days after receiving process in such suit, or within seven days before the day appointed for the hearing thereof (whichever limitation of time may afford the defendant the longer period), deliver to the plaintiff in such suit a notice in writing, specifying such qualification, with the same certainty as is by this Act required in a declaration of qualification; and if the plaintiff shall think fit thereupon not to proceed any further, he may, within two days of the day appointed for the hearing, deliver to the defendant a notice that he will proceed no further in such suit, and the suit shall then abate.

15. Upon the hearing of any such suit no qualification not contained in the declaration or notice shall be allowed to be proved by the defendant.

16. Where property designated in a declaration or notice is chargeable with an incumbrance jointly with other property belonging to the same person, such property shall for the purposes of this Act be considered to be deteriorated in value by the existence of such incumbrance only to the extent to which the

other property jointly charged therewith is insufficient to satisfy the same.

17. In case the plaintiff in any such suit shall be nonsuit, or judgment be given against him, the person against whom such suit shall have been brought shall receive from such plaintiff such full and reasonable indemnity, as to all costs, charges, and expenses incurred in and about such suit, as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer.

18. Not more than one penalty shall be recovered from the same person under this Act in respect of any number of offences against this Act committed before the commencement of a suit in which a penalty shall be recovered, and before the defendant in such suit had received notice of the commencement thereof.

19. Whenever any suit shall have been commenced for the recovery of the penalty mentioned in this Act, and a subsequent suit shall be commenced in respect of Acts done anterior to the commencement of the first suit, the Judge of the County Court in which such subsequent suit has been brought shall, upon being satisfied that the first suit is being prosecuted without fraud or delay, stay proceedings from time to time in the subsequent suit until the first suit has been determined, or until the plaintiff in the first suit has been guilty of unnecessary delay; and after judgment has been recovered in the first suit, and has been satisfied, the subsequent suit shall be stayed absolutely.

20. Every suit for a penalty under this Act shall be commenced within six months after the offence.

#### *IV. Qualification by Degree.*

21. This Act shall not extend to, and no qualification by estate shall be required of, persons of the following degrees:

1. Peers or Lords of Parliament:
2. Members of her Majesty's most honourable Privy Council:
3. Justices of either Bench and Barons of the Court of Exchequer:
4. Eldest sons of Peers or Lords of Parliament:
5. Eldest sons of persons capable of being elected a member of the House of Commons for any county, riding, or division.

#### *V. Qualification by Office.*

22. This Act shall not extend to, and no qualification by estate shall be required of, persons holding the following offices, and acting as justices of the peace within the limits hereinafter-mentioned:

- 1st. Officers of the Board of Green Cloth acting within the verge of her Majesty's palaces:
- 2nd. Heads of colleges or halls within the University of Oxford, or Vice-Chancellor of that University, or Mayor of the City of

Oxford, acting within the Counties of Berks and Oxford :

3rd. Heads of colleges or halls within the University of Cambridge or Vice-Chancellor of that University, or Mayor of the Town of Cambridge, acting as justices of the peace within the County of Cambridge :

4th. Commissioners or principal officers of the Navy, Under-Secretaries in the offices of the principal Secretaries of State, and the Secretary of Chelsea College, acting within those counties or places where these officers have usually been justices of the peace :

5th. Judges of the County Court acting for any county, riding, or division for which he is appointed Judge of the County Court.

#### VI. *Special Disqualification.*

23. No attorney, solicitor, or proctor in any Court shall be capable of being a justice of the peace for any county, riding, or division during such time as he shall continue to practise as an attorney, solicitor, or proctor.

#### VII. *Local Exception.*

24. This Act shall not extend to any city, town, Cinque Port, or liberty having justices of the peace within their respective limits and precincts, by charter, commission, or otherwise, nor to any persons acting as justices of the peace within any such city, town, Cinque Port, or liberty.

The Acts and parts of Acts repealed are,—the whole of 13 Rich. 2, Stat. 1, c. 7—"What Sort of Persons shall be Justices of Peace, and what their Charge is to be."

18 Hen. 6, c. 11—"Of what yearly Value in lands a Justice of Peace ought to be."

5 Geo. 2, c. 18—"An Act for the further Qualification of Justices of the Peace."

18 Geo. 2, c. 20—"An Act to amend and render more effectual an Act passed in the Fifth Year of his present Majesty's Reign, entitled 'An Act for the further qualification of Justices of the Peace.'"

6 & 7 Vict. c. 73, s. 33—"An Act for consolidating and amending several of the Laws relating to Attorneys and Solicitors practising in England and Wales."

9 & 10 Vict. c. 95, s. 21—"An Act for the more easy recovery of Small Debts and Demands in England."

### COUNTY PALATINE OF LANCASTER TRIALS BILL.

THIS Bill, after reciting the 15 & 16 Vict. c. 76, s. 103, which enacted, that Records of the Superior Courts at Common Law should be brought to trial and entered and disposed of in the Counties Palatine in the same manner as in other counties; and the 27 Hen. 8, c. 24, s. 5, which provided, that justices of assize to be made and assigned within the County Pala-

tine of Lancaster should be made and ordained by Commission under the King's usual Seal of Lancaster, and that in pursuance of the said proviso one Chief Justice and one other justice, being respectively Judges of the Superior Courts at Westminster, have been from time to time constituted and ordained, by grants contained in separate letters patent under the Seal of the County Palatine of Lancaster: and that it is expedient to make further provision for assimilating the practice of the said County Palatine of Lancaster to that of other counties, with respect to the trial of issues from the Superior Courts of Common Law at Westminster; proposes to enact as follows:—

It shall be lawful for her Majesty, her heirs and successors, hereafter to issue Commissions of Assize under the Seal of the County Palatine of Lancaster directed to the Judges appointed for the time being to the respective offices of Chief Justice and Justice of Common Pleas within the said County Palatine of Lancaster, and to such of her Majesty's counsel learned in the law, serjeants and barristers-at-law, having patents of precedence, or precedence within the Bar, of the County Palatine of Lancaster, and other serjeants-at-law to be from time to time selected for that purpose, authorising and commanding them to take all the assizes, juries, and certificates, before whatever justices arraigned, in the said County of Lancaster, in like manner and with the like effect as such commissions are issued into other counties, together with the like writs or commissions of association, and other writs and proceedings, as in other counties, and that every person so authorised shall have the like power to be and act as a Judge or Commissioner of Assize for the trial of issues from the Superior Courts of Law at Westminster and other issues in the said County Palatine of Lancaster as any person so authorised has in any other county, and shall also be deemed to be authorised by such Commission, and shall thereby have full authority to act as a Judge for the trial of any issues of fact in any causes depending in the said Court of Common Pleas at Lancaster: Provided, and it is declared, that nothing herein contained shall deprive the Chief Justice or justice appointed or so ordained as aforesaid by grant contained in letters patent of any authority or jurisdiction to try issues from the Superior Courts at Westminster and other issues in the said County Palatine of Lancaster, and that all trials of such issues heretofore had or to be had before such Chief Justice or justice constituted or ordained as aforesaid shall be deemed to have been and to be tried by competent authority, and that the acting prothonotary for the time being of the Court of Common Pleas at Lancaster shall continue to officiate as associate in the said County Palatine of Lancaster, as heretofore, and shall accordingly be named in such commissions of association and other writs and proceedings.



## ACTS OF PARLIAMENT AMENDING BILL.

THIS Bill of Mr. Locke King, Mr. Watson, and Mr. Chambers recites, that the consolidation under one head of all Acts of Parliament relating to one and the same subject matter will greatly advance the administration of justice, and it is therefore desirable that such changes in the mode of introducing amendments of Acts shall be made as will facilitate the consolidation for the future, and sustain it where effected: it is therefore proposed to enact:—

1. That from and after the end of this session all Bills in Parliament for amending or explaining any Act of Parliament which it is not intended wholly to repeal shall be exhibited and passed in the manner hereinafter directed, and not otherwise.

2. Every such Bill shall specify every Act, and the sections or other divisions of the said Act, which it is intended thereby to alter or add unto, and shall set forth the sections or other divisions, or parts of sections or divisions, if any, which it is proposed by such Bill to enact in the place of or in addition to any such Act, or any section or division thereof; and every such Bill may be in the form or to the effect following; that is to say:—

“A Bill to amend a certain Act [or certain Acts] of Parliament relating to [stating the subject matter of the Act or Acts].

“Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the Act of the Parliament of the United Kingdom [or of Great Britain, or of England, or of Scotland, or of Ireland], passed in the year of the reign of chapter

relating to [the subject matter of such Act], shall be amended in the manner following; that is to say:

“By omitting sections [enumerating them] of the said Act:

“By omitting so much of section of the said Act as is comprised between the words [words] and the words [words] in the said section:

“By omitting section of the said Act, and inserting in the place thereof the following section; namely [specifying the number of the proposed section, and setting the said section forth in words]:

“By inserting after section of the said Act the following new section [or sections]; namely [specifying the number of each such new section, and setting it forth in words]:

“And by re-enacting the said Act as so amended, to come into force from and after the end of this Session of Parliament [or at such other period as may be deemed convenient].”

3. Whenever any Act shall have passed un-

der the authority of the foregoing provisions, all amendments or alterations thereby directed to be made in any Act or Acts in the said first-mentioned Act specified shall be made accordingly; and the numbering of the sections of any such Act or Acts respectively as amended or altered shall proceed therein from number one to the last number progressively; and so soon as any such Act shall have been so amended or altered, and so numbered as aforesaid, the same shall be forthwith enrolled, printed, and promulgated under public authority in the stead of the original Act, and shall bear even date with the Act directing the said amendments or alterations.

4. After such amendments or alterations shall have been made in the manner aforesaid the office of the Act directing them shall be exhausted, and the same Act shall for ever thereafter be deemed to have expired, and it shall not be necessary to print or promulgate the same, or to reprint the said original Act.

## NOTICES OF NEW BOOKS.

*A Treatise on the Administration of Trust Funds under the Trustee Relief Act: with an Appendix, containing the Trustee Relief Act, the Act for the further Relief of Trustees, the General Orders, and Forms of Proceedings.* By JOHN DARLING, Esq., of the Inner Temple, Barrister-at-Law. London: V. & R. Stevens and G. S. Norton. 1855. Pp. 140.

MR. DARLING in this work gives a complete view of the manner in which trust property is dealt with under the Trustee Relief Act. He thus describes the principal object of the Statute:—

“The principal object which the Legislature had in view in passing the Statute 10 & 11 Vict. c. 96, commonly called the Trustee Relief Act, was to improve the position of trustees, by enabling them to free themselves more easily from the burdens and liabilities of their office. Before the passing of the Statute, a trustee could not obtain the assistance of the Court of Chancery in cases where the execution of his trust was attended with any difficulties, without a suit being instituted either by himself or his *cestuis que trust* for the administration of the trust property. Nor when the trust was a continuing one, and the trust instrument contained no power to appoint new trustees, could he retire from his office without giving rise to a suit for the appointment of new trustees. Now, apart from the reluctance which conscientious trustees would naturally feel in burdening the trust property with the expense of a suit in Chancery, the Court did not consider them warranted in acting so as to lead to that result, either by retiring from their office, or by declining to act, except under the direc-

tion of the Court, unless they were able to show that they had good grounds for the course they adopted. If they failed to establish this to the satisfaction of the Court, although their conduct in the matter might not have been marked by any want of good faith, they were generally refused their costs, whether the suit was one for the administration of the trust property, or for the appointment of new trustees.

"It is unnecessary to say that this state of things was frequently productive of much embarrassment and inconvenience to trustees; and to provide a suitable remedy for it appears to have been the main design of the Legislature in passing the Trustee Relief Act. That Statute is intended to enable trustees to relieve themselves of their trust in a simple and inexpensive manner, and so to give them a larger power of getting rid of the burdens and liabilities of their office than they formerly possessed. With this view it authorises the trustees in the first instance, upon their complying with certain formalities, to pay the trust funds in their hands into the Court of Chancery, and then empowers the Court to execute the trust in a summary way upon petition. The trust is thus shifted from the trustees to the Court at a comparatively trifling expense to the trust property. It should be observed that the Act is confined to property of which the Court can conveniently accept the trusteeship, and that its provisions, in consequence, extend only to money, and to the ordinary public funds and securities.

"Although the primary purpose of the framers of the Act was to afford relief to trustees, it is clear, both from the language of the preamble and from the nature of the enactment itself, that this was not their only object. Another end which they had in view was to confer incidentally benefits of no inconsiderable importance upon *causis que trust*, by supplying in the machinery of the Act a cheap and expeditious mode of making the Court of Chancery the depository of trust property, and also of obtaining its decision upon questions arising out of the administration of trusts."

The contents of the volume are as follows:—

### I. *The payment of Trust Funds into Court:—*

1st. To what description of trustees and trust funds the Act is applicable.

2nd. Under what circumstances trustees are authorised to pay trust funds into Court.

3rd. How trustees must proceed in paying trust funds into Court.

4th. How far trustees are discharged by such payment.

### II. *Payment of Trust Funds out of Court:—*

1st. Applications for payment of trust funds out of Court in ordinary cases.

2nd. Special circumstances incident to applications for payment of trust funds where paupers, infants, lunatics, or married women are interested.

3. The practice respecting stop orders and charging orders.

### III. *Costs of Proceedings under the Act:—*

1st Costs of paying a trust fund into Court.

2nd. Costs of applications for payment out of Court of the capital of a trust fund.

3. Costs of applications for payment of the dividends of a trust fund.

The appendix comprises the two Statutes 10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74; also the General Orders of June 10, 1848 and May 7, 1852, with the Forms of Proceedings.

The Author notices the case of *Re Foyard*, decided during the progress of his work through the press.

"In this case the surviving trustee, under a deed, by which a fund was expressed to be settled upon certain trusts, paid the fund into Court under the Act. A petition was presented by a party who laid claim to the fund on the ground that it had never been effectually subjected to the trusts of the deed. The Lords Justices held, that, as the title set up by the petitioner was *adverse* to the trusts, he could not assert his claim by a petition under the Act, but must file a bill for that purpose. The decision does not appear to have proceeded on any distinction between a petition and a bill, as such: but simply on the ground that the question raised by the petition could not be tried under the statutory jurisdiction at all. The whole power of paying the fund into Court under the Act, and the consequent jurisdiction over it when paid in, being based on the assumption that the trustee held the fund upon the trusts of the deed, the petitioner could not repudiate the trusts and at the same time institute proceedings under the Act.

"It will be seen that this case confirms the opinion expressed at page 7 of this work, that the Act does not apply to *constructive trusts*. For treating the claim made by the petition as well founded, it is as clear that the trustee held the fund upon a constructive trust for the petitioner, as it is that, in the opposite view, he held it upon an express trust for the parties claiming under the deed. If, then, the Act could have been considered as applying to constructive trusts, the Court might have properly disposed of the case on the petition, and determined upon which species of trust, the express or the constructive, the trustee really held the fund. By declining to take that course, the Court virtually decided that the Act is inapplicable to any but express trusts.

"It may be proper to add, that in the case of *Cox v. Cox*, 1 Kay & John. p. 251—re-

ported, like the previous case, at too late a period to be noticed in the body of the work—Sir W. P. Wood, V.C., points out the use that may be made of the provisions of the Act, in removing the difficulties which occur on the sale of real estate when a person entrusted with a power of sale is unable to give receipts for the purchase-money—thus giving the sanction of his authority to a suggestion to the same effect which will be found at page 9 of this work.”

## NOTES ON RECENT STATUTES.

### COMMON LAW PROCEDURE ACT, 1852.

#### ACTION AGAINST BRITISH SUBJECT ABROAD. —SUBMISSION TO JURISDICTION BY APPEARANCE.

IN an action on six promissory notes, a British subject was served, at Passy, in the empire of France, with the copy of a writ of summons in the form prescribed by the 15 & 16 Vict. c. 76, s. 18, and which was specially indorsed. The defendant appeared to the action, and after declaration it was discovered that the notes on which the action was brought were made and issued at Calcutta: *Held*, that he should have applied to a Judge for an order for particulars of the plaintiff's demand without appearing, under the 20th rule of Hilary Term, 1853, and that by appearing he had given the Court jurisdiction. A rule was therefore discharged to set aside the writ of summons and all subsequent proceedings. *Forbes and others v. Smith*, 10 Exch. 717.

#### OMISSION IN DECLARATION IN ACTION FOR FREIGHT, OF WORDS “MONEY PAYABLE.”

THE declaration in an action for freight was as follows:—“The plaintiff sues the defendant for freight for the conveyance by the plaintiff for the defendant, at his request, of goods in ships.” The defendant pleaded “never indebted,” and on the trial the plaintiff obtained a verdict.

*Pollock*, L. C. B., said, “this was a motion to arrest the judgment, on the ground that the declaration merely stated that ‘the plaintiff sued for freight’ without saying ‘for money payable’ for freight, as required by the form given by the Common Law Procedure Act, 1852. There is no doubt that the declaration would have been bad on demurrer, but after pleading over (I do not know that the fact of a verdict having passed is material) the decla-

ration must be read in that sense, which gives the plaintiff a right of action. The expressions used are ambiguous; and since the declaration admits of two meanings, we think that it is not competent for a party who pleads to it as a claim for debt payable *in presenti*, afterwards to arrest the judgment, on the ground that it might also mean a debt payable *in futuro*. There will therefore be no rule. At the same time we cannot help calling the attention of the Profession to the carelessness which the forms given by this Statute are followed. Forms are provided for nearly every case which usually occurs in practice; and when the work is almost done to the hands of those who profess to draw pleadings, it is to be regretted that they will not attend to the forms provided for them, but resort to others not authorised by the Act.” *Wilkinson v. Sharland*, 10 Exch. 724.

## LAW OF COSTS.

#### WHEN VENDOR LIABLE TO THOSE OF PURCHASER NOTWITHSTANDING CONDITION OF SALE.

BY conditions of sale it was provided, that if any purchaser should make any objection or requisition which the vendor should be unable or unwilling to remove, it should be lawful for the vendor if he should think fit by writing to rescind the contract; and in that case the purchaser should be entitled to a return of his deposit without interest, *but should not be entitled to any costs or damages*. The vendor made numerous fruitless attempts to remove an objection made by a purchaser who was desirous of being discharged from the purchase.

The Vice-Chancellor *Wood* held, that the vendor was not entitled to return him the deposit only, but must also pay interest on the deposit and the purchaser's costs.—*M'Culloch v. Gregory*, 1 Kay & J. 286.

#### OF TRUSTEE PAYING MONEY INTO COURT UNDER TRUSTEE RELIEF ACT.

IT is the settled rule that a trustee who has paid funds into Court under the 10 & 11 Vict. c. 96, and has been served with a petition for the transfer thereof to the petitioner, is entitled to his costs. Per Vice-Chancellor *Wood* in *In re Erskine's Trust*, 1 Kay & J. 302.

ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1855.

Queen's Bench.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Addison, William Richard O. C., Sobham	T. Huatwick, Sobham
Anderson, Francis, 2, Winchester-buildings, Great Winchester-street; and Brighton	J. Thrupp, Winchester-buildings
Anton, Henry, 111, Jermyn-street, St. James's	W. Rixon, King William-street
Argles, Charles, 16, St. George's-place, Hyde-park	J. B. Holman, Bedford-row
Aston, Charles, 69, Albert-street, Mornington-crescent; and Manchester	J. P. Aston, Manchester
Ayckbourn, Hubert, 10, Princes-street, Stamford-street; and New Kent-road	E. Hodgkinson, Little Tower-street
Balden, Samuel, 38, Waterloo-street, Birmingham	S. Balden, sen., Birmingham
Barker, Wm. England, 38, Edward-street, Hampstead-road; and Huddersfield	W. Barker, Huddersfield
Bartleet, William Smith, Stourbridge	Virnon and Minshall, Bromsgrove
Barton, Walter, Lee; and Eggesford	Symes, Weston, Teesdale, and Sandilands, Fen-church-street
Baughan, Charles Algernon, 50, Hamilton-terrace, St. John's-wood; and Clifford's-inn	C. Robson, Clifford's-inn
Baxter, Stafford Charles, 9, Westbourne-villas, Harrow-road	R. M. Baxter, and S. B. Somerville, Lincoln's-inn-fields
Beard, Thomas, 19, Culford-road, North, Kingsland	W. R. Buchanan, Basinghall-street
Beilby, George, jun., 15, Grafton-road, Kentish-town	D. Goodwill, jun., Hull; R. Bell, Hull
Belfrage, John Henry, 9, Gray's-inn-square; St. Swithin's-lane; and Newcastle-upon-Tyne	J. Clayton, Newcastle-upon-Tyne; J. Scott, St. Swithin's-lane
Bowles, Charles John, 36, Store-street, Tottenham-court-road; and Ludlow	J. Williams, Ludlow
Brown, Henry Thomas, 5, Great Ryder-street, St. James's	F. Potts, Chester; N. C. Milne, Temple
Brown, Samuel, 16, Edward-street, Portman-square; and Bristol	T. C. Cornish, Bristol
Buttanshaw, M. Noble, 15, Everett-street, Russell-square	F. Scuddamore, Maidstone
Cann, Edwin Newman, 1, Crystal-terrace, Wandsworth-road; and Wandsworth-common	G. L. Norman, Somerset; J. Cann, jun., Lincoln's-inn-fields
Chambers, Thomas Bradley, Halifax	G. Higham, Halifax
Chester, Thomas, jun., Kington-upon-Hull	J. Walker, Parliament-street; T. Greaves, Kington-upon-Hall
Church, Adolphus Edgar, 8, Manchester-street, Argyll-square; and Gray's-inn square	J. H. Church, Colchester
Codd, Samuel, 22, Calthorpe-street, Gray's-inn-road; Furnival's-inn; and Darlington	H. Hutchinson, Darlington
Cordes, Lucas, 12, Gray's-inn-square; and The Woodlands, near Newport	C. Prothero, Newport
Coulcher, Cooper, Ely	M. Coulcher, Downham Market; G. Platten, King's Lynn; F. R. Partridge, King's Lynn
Coulton, William Gordon, Coventry	J. J. Coulton, King's Lynn
Craven, Abraham, 12, Compton-st., East; Brunswick-square; and York	E. Peters, York
Cross, William Bowyer, Turnham-green	B. Dinon, Wakefield
Culley, Robert Thomas, 1, New Chapel-place, Kentish-town	W. Skipper, Norwich
Dobie, Robert Jas., 5, Highway-crescent, West; and Bedford-row	G. Dunn, Raymond-buildings; H. Moxan, Bedford-row
Dubois, Frederick Thomas, 14, Apollo-buildings, Walworth; and Derby	J. Huish, Derby
Earle, Horace, 2, Shaftesbury-crescent, Pimlico	C. Ford, Bloomsbury-square
Edmonds, William, 6, Cloudeasley-square	W. S. Masterman, Clifford's-inn
Evans, Alfred, 34, Surrey-street, Strand; and Gloucester	J. R. Wemyss, Gloucester
Faithfull, Henry, 1, Howard-place, Brighton	G. Faithfull, Brighton
Ferguson, Sampson Gould, Leek	W. Challinor, Leek
Foreman, Alfred, 7, Harrington-street, Regent's-park	G. Knox, Bloomsbury-square
Forrester, Wm., 3, St. James's-terrace, Kentish-town-road; and Shaftesbury	T. Wills, Shaftesbury; W. Burridge, Ditto.
Forsyth, Alexander, 17, Lincoln-street, Bow	J. P. Elmalie, Moorgate-street
Frampton, Edward, 14, River-street, Muddleton-square	J. H. Bolton, New-square

## Clerks' Names and Residences.

## To whom Articled, Assigned, &amp;c.

Fry, John Thomas, 37, Woburn-place, Russell-square; and Pockham-rye	J. Lexley, Cheapside
Furrell, James, 9, Felix-place, Liverpool-road; and Swansea	D. David, Swansea
Gale, William Godwin, 14, Upper Porchester-st., Hyde-park; and Frome	W. C. Cruttwell, Frome
Gething, James Edwards, 11, Bedford-row; and Newport	T. M. Llewellyn, Newport
Godden, Wm., 6, Woburn-place; and Stanhope-place	J. Tilleard, Old Jewry
Gould, Charles, 27, Albert-street, Regent's-park; Camden-town; and Sheffield	B. Wake, Sheffield
Gover, Henry, 17, Lee-park, Lee, Kent	W. H. Watson, Bouverie-street; J. U. Harwood, Clement's-lane
Gresham, James Harebooth, Hensale	T. Thompson, Kingston-upon-Hull
Grimsey, Benjamin Page, 26, Parkfield-street, Islington; and Ipswich	J. Orford, jun., Ipswich
Gunning, Frederick, 14, Alexander-sq., Brompton	G. Blaxland, Crosby-square
Guy, George Fuller, 86, Park-street, Grosvenor-square; and Great Ryder-street, St. James's	W. Lovell, Great Ryder street
Harris, Joseph, 14, Doughty-street; and Newton-Bushel	R. Francis, Newton-Bushell; H. F. Church, Bedford-row
Hayes, Samuel, Scawby	T. Freer, Glamford-bridges
Hazeland, Francis Innes, 34, Lime-street, City; and Totnes	T. Bryett, Totnes
Helmores, Joseph Cornish, 9, Percy-circus, Pentonville; Lincoln's-inn-fields; and Exeter	W. Buckingham, Exeter
Hicks, Richard Rawlins, 2, Dorchester-pl., New North-road; and Old Broad-street	S. W. Haynes, Warwick
Hole, Charles Wm., late Charles William Carter, Bideford	C. Hole, late C. Carter, Bideford
Hooper, Charles Race Septimus, 7, Staple-inn, Holborn; and Bronte-house, North Cheam	G. Basham, Staple-inn
Howard, Richard Nicholas, 24, Myddelton-square, Pentonville; and Weymouth	J. Tizard, Weymouth
Hunter, John, jun., Stamford Hill	R. Hunter, New-square
Hyde, Charles Osmond, 1, Highgate-rise, Upper Kentish-town; and Ely-place	H. Hyde, Ely-place
Illingworth, Henry, jun., Bradford	C. Clough, Bradford
Ingledeu, John Pybus, Torquay; and Newcastle-upon-Tyne	H. Ingledeu, Newcastle-upon-Tyne
Inman, H. Batchellor, B.A., 14, Beaufort-buildings, Bath	T. F. Inman, Bath
Issacs, Leon Lewis, 16, King-street, Finsbury; and Preston	T. Wood, Corbet-court; R. Ascroft, Preston
James, William Vaughan, Haverfordwest	J. E. James, Haverfordwest
Johnson, George James, Hagley-road, Birmingham	H. W. Tyndall, Birmingham
Johnson, Henry Skingley, 31, Argyle-sq., King's-cross; Islington; Gray's Inn-rd.; & Halstead	G. Sperling, Halstead

[To be continued.]

## NOTES OF THE WEEK.

## LAW APPOINTMENTS.

*William Atherton Esq., Q. C., M. P.*, has been appointed Judge Advocate of the Fleet and Counsel to the Admiralty, in the room of Thomas Phinn, Esq., appointed Second Secretary to the Admiralty.

The Queen has been pleased to appoint Thomas Warwick Brooke, Esq., to be Stipendiary Magistrate for the Falkland Islands.—From the *London Gazette* of 8th June.

*Horace Mann, Esq., Barrister-at-Law*, has been appointed Registrar to the new Board of Examiners of the civil service.

The Regius Professorship of Civil Law in the University of Oxford, recently vacated by the death of Dr. Joseph Phillimore, has been filled

up by the appointment of Dr. Travers Twiss, Barrister-at-Law, Vicar-General of the Archbishop of Canterbury, and recently Professor of Political Economy in the same University.—*Times*.

## ADMISSION IN IRELAND OF A BARRISTER AS AN ATTORNEY.

*Court of Common Pleas.—In re Michael Kennan, June 4.*—Mr. Lynch, Q. C., renewed an application which he had made in this case last Term, that Mr. Michael Kennan, a member of the Bar, should be admitted one of the attorneys of the Court without serving the usual apprenticeship. The circumstances under which the application was made were, that Mr. John Kennan, brother of the applicant, an attorney of the Court in large practice, had lately died, leaving a widow and several chil-

dren, for whose benefit Mr. Kennan wished to carry on his late brother's business. On the former occasion the Court directed that Mr. Kennan should apply to have himself bound to an attorney. This condition had now been complied with, and Mr. Kennan undertook by his affidavit that on being admitted an attorney he would carry on the business in his deceased brother's office to a final determination for the sole benefit of his brother's widow and children. Notice of the application was served on the Law Society, who did not oppose it. The learned counsel was about stating the facts of the case at length, when the Chief Justice intimated that it was unnecessary to do so, as the facts were fresh in the recollection of the Court; and the conditions having been com-

plied with, the application was granted.—From the *Evening Freeman*.

#### CALLS TO THE IRISH BAR.

The following gentlemen were on the 30th May called to the Irish Bar:—

Wm. Woodlock, Esq., son of W. Woodlock, Esq., solicitor.

Philip Keogh, Esq., of Gervagh in the County of Sligo.

F. T. Longworth Dames, Esq., Greenhill, in the King's County.

C. J. Ferguson, Esq., Prospect, Mullingar.

William O'Brien, Esq., of Cork.

John J. Kirby, Esq., of Fermoy.

William Anderson, Esq., of Dungarvan.—From the *Morning Herald*.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lords Justices.

*Ex parte Mellor, in re Mellor and another.*  
June 4, 1855.

**BANKRUPT.—LOSS ON MINING COMPANY SHARES.—CERTIFICATE, REFUSAL OF.**

*A bankrupt purchased jointly with another person 4,000 shares in a mining company, on the cost-book principle, but the contract was not completed within a week from its date. He lost 200l. in the transaction. Quære, whether this was a dealing in "stock" under the 12 & 13 Vict. c. 106, s. 201, and the Commissioner bound to refuse the certificate?*

*With the consent of the assignees, however, the certificate was suspended for two years, and to be then of the 3rd class, with protection in the meantime.*

THIS was an appeal from the decision of Mr. Commissioner Perry refusing the certificate of this bankrupt. It appeared that he had purchased jointly with another person 4,000 shares in a copper and gold mining company, which was carried on on the cost-book principle, but that the contract for the purchase was not completed within a week from its date. The bankrupt having lost 200l. in the transaction, the Commissioner was of opinion that it amounted to a dealing in "stock" within the 12 & 13 Vict. c. 106, s. 201,<sup>1</sup> and that he was bound to refuse the certificate: *Ex parte Matheson*, 1 De G. M'N. & G. 448; *Ex parte Copeland*, 2 ib. 914.

*Bacon and De Gez* in support; *Little* for the assignees.

The Lords Justices, without deciding the

<sup>1</sup> Which enacts, that "no bankrupt shall be entitled to a certificate of conformity under this Act, and any such certificate if allowed shall be void, if such bankrupt shall" "within one year next preceding the issuing of the fiat or the filing of such petition, have lost 200l. by any contract for the purchase or sale of any Government or other stock, where such contract was not to be performed within one week after the contract," &c.

point, and with the consent of the assignees granted a certificate of the third class at the end of two years, with protection in the meantime.

*Wheatley v. Bastow.* June 9, 1855.

**MORTGAGE.—SURETY.—REDEMPTION.—SOLICITOR.**

*H. (the plaintiff), T., and A. were entitled, subject to a life estate, to a sum of consols, and the plaintiff and T., the former as security for the latter, assigned their two-third shares to secure repayment of 1,000l., and the mortgagee placed a stop order on the fund. On the marriage of the mortgagee the debt and security were settled, but the stop order was not renewed. The tenant for life assigned and T. and A. obtained payment out of their shares—the solicitor who had acted for all parties in the several transactions having instructed counsel to appear, for the plaintiff and the mortgagee on the petition and to consent: Held, reversing the decision of Vice-Chancellor Stuart, that there must be a decree for redemption or to dismiss the bill.*

*The solicitor, who it was stated had acted on the petition without the authority of the plaintiff and the mortgagee, was ordered to show cause why he should not be struck off the Rolls.*

THIS was an appeal from the decision of Vice-Chancellor Stuart. It appeared that the plaintiff, Hester Barratt, now Mrs. Wheatley, Thos. Barratt, and Ann Barratt were entitled equally, subject to a life estate therein, to a sum of 4,000l. consols, which had been transferred into Court. Hester Barratt, as security for Thomas Barratt, together with the latter afterwards assigned two-thirds of the fund to secure the repayment of 1,000l. to William Bastow, who thereupon obtained the usual stop order. On the marriage of Mr. Bastow, the debt and security were assigned to the trustees of his settlement, but no stop order was obtained. The tenant for life subsequently assigned the interest in the fund, and Thomas

and Ann Barratt obtained payment of their shares out of Court on petition. It appeared that Mr. ——— acted as solicitor for all parties in the several transactions and petition, and had instructed counsel to appear and consent on behalf of Mrs. Wheatley and Mr. Bastow and his trustees, as it was alleged without any authority. This bill was now filed to protect the share of Mrs. Wheatley against the claim of Mr. Bastow, on the ground that the trustees had lost their right against it by their neglect in not putting a stop order on the fund primarily liable. The Vice-Chancellor having made a decree in favour of the plaintiffs, this appeal was presented.

*Malins and Goldmid* for the plaintiff; *Bacon and Speed* for the defendants.

The Lords Justices said, that the plaintiff's case had failed, and there must be a decree for redemption or to dismiss the bill. With regard, however, to the solicitor, as to whom it was to be recollected that all that had been said was on the footing of evidence between other parties, he must have an opportunity of being heard, and the course would be adopted, which was taken by Lord Rosslyn in *Dungey v. Angove*, 2 Ves. J., 304, and the solicitor be ordered to show cause why, on the matters now appearing, he should not be struck off the rolls.

#### Vice-Chancellor Wood.

*In re Mary Brown.* June 7, 1855.

WILL.—CONSTRUCTION.—GIFT OF UNDISPOSED OF ESTATE.—VOID BEQUEST.

*A testatrix having a power of appointment by deed or will, devised two estates to her husband in fee, and gave another estate "and all other the hereditaments comprised in the settlement not thereinbefore disposed of," to H. for life, with remainder to his children. By codicils she revoked the devise to her husband and gave it to two charities, which was admitted to be void, under the Mortmain Act: Held, that H. did not take the void bequest under the will, but that it passed under the settlement as unappointed.*

UPON the marriage of Mr. and Mrs. Brown, two estates called Benson's and Harrison's, were conveyed to trustees in trust for the separate use of the wife for life, with remainder to her husband and his assigns for his life, and another estate called Bingham Lodge Farm, was settled to the use and intent that the husband, if he survived his wife, should receive 100*l.* per annum and subject to such uses, the estates were limited to such uses as the wife might by deed or will appoint, and in default of appointment, to the use of her right heirs. Mrs. Brown, by her will, dated in September, 1838, appointed and devised the Benson and Harrison Estates to her husband in fee, and the Bingham Lodge Farm, and all other the hereditaments comprised in the settlement not therein disposed of (subject to certain annuities) to the use of W. H. Hartley for life,

with remainder to his children in tail. By a second codicil, dated in July, 1847, Mrs. Brown revoked the devise in her first codicil which revoked the appointment in her will of the Benson and Harrison estates to her husband and gave them to other parties, and she thereby devised the same to trustees in trust to sell, and to divide the proceeds after the payment of three legacies between two charitable institutions. The charitable gifts were admitted to be bad under the Mortmain Act, and on the death of the wife and husband, the trustees sold the two estates, discharged the legacies, and paid the residue into Court under the 10 & 11 Vict. c. 96. The question now arose on this petition by Mr. Hartley, as to who was entitled to the fund.

*H. F. Bristowe* for the petitioner; *Daniel, W. H. Smith, Rogers, and W. J. Bovill*, contra, were not called on.

The Vice-Chancellor said, that the words "all other the hereditaments comprised in the settlement not thereinbefore disposed of," did not constitute a residuary devise, but that the fund passed to the heir-at-law as in default of appointment.

#### Court of Queen's Bench.

*Parsons v. Alexander.* June 4, 1855.

ACTION ON CHEQUE GIVEN FOR LOSSES AT BILLIARDS.

*The defendant gave a cheque for a sum of money he had lost at billiards, and on its being dishonoured pleaded to an action to recover its amount that it was so given: Held, that the case came within the 8 & 9 Vict. c. 109, s. 18, and a rule to set aside the verdict for the defendant was discharged.*

THIS was an action to recover the amount of a banker's cheque, which had been dishonoured, to which the defendant pleaded that it was given in respect of money lost at billiards. On the trial before *Eyre, J.*, the defendant obtained a verdict, and this rule nisi had been granted to set it aside and enter it for the plaintiff.

By the 8 & 9 Vict. c. 109, s. 18, it is enacted, that "all contracts or agreements, whether by parole or in writing, by way of gaming or wagering shall be null and void; and that no suit shall be brought or maintained in any Court of Law or Equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made: Provided always, that this enactment shall not be deemed to apply to any subscription or contribution or agreement to subscribe or contribute for or towards any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime, or exercise."

*Roe and Taprell* showed cause; *Collier* in support.

The Court said, there was evidence in sup-

port of the plea, which brought the case within the section of the Act, and that it was not within the proviso, and the rule would accordingly be discharged.

*In re ———, gent., one, &c.* June 7, 1855.

**RULE ON ATTORNEY STEWARD OF MANOR TO GIVE ACCOUNT OF QUIT RENTS.**

*A rule nisi was refused on an attorney who was steward of a manor to give an account of certain quit rents which he had received for the lord of the manor and for payment over of the same, such money not being received qua attorney but as steward.*

THIS was a motion for a rule nisi on an attorney, who was steward of a manor, to give an account of certain quit rents received for the lord of the manor, and for payment over of the same.

*Paterson*, in support, cited *Ex parte Aitkin*, 4 B. & Ald. 47.

The Court said, that the lord of the manor had appointed a person as steward who happened to be an attorney, and who on being dismissed had not rendered an account. There was no reason for the summary interference of the Court, because he was an attorney as the money was received, not as attorney but as steward. The rule would accordingly be refused.

*In re ———, gent., one, &c.* June 7, 1855.

**ATTORNEY.—OBTAINING MONEY BY FALSE PRETENCES.—SUMMARY JURISDICTION.**

*S. paid a sum of 200*l.* to an attorney in consideration of his getting his son a Government appointment, and a memorandum was prepared by the attorney and signed by B., to the effect that the situation should be obtained in six weeks, or the money be returned: Held, that the receipt of the money was not shown to be in the character of attorney, and a rule nisi was refused on him to refund the money and answer affidavits, or be struck off the rolls.*

It appeared that a Mr. Stacey, a builder of Windsor, had become acquainted with an attorney, many years since, and that he had asked whether he could do anything for him, and ultimately the attorney wrote that he would obtain his son a Government appointment on payment of a sum of 200*l.* Mr. Stacey came to London, where the attorney was acting as solicitor to a quartz mining company, and he handed the money to the attorney's clerk, who handed it to him. A memorandum was prepared by the attorney, that if the situation was not obtained in six weeks the money should be returned, and this memorandum was signed by a person representing himself as Sir George Beresford. The situation not having been procured or the money returned within the time specified, this motion was made for a rule nisi on the attorney to refund the

200*l.* and answer the matters of the affidavit, or to be struck off the roll.

*H. Bullar* in support.

The Court said, that it was not shown the attorney in obtaining the money had acted in that capacity, although the facts showed a conspiracy to obtain money by false pretences, and for which he might be severely punished. The rule would be refused.

*In re William Henry Orchard.* June 12, 1855.

**ATTORNEY.—CONVICTION OF CONSPIRACY.—AFFIDAVIT OF INCREASE.—SUSPENSION FROM PRACTICE.**

*An attorney was convicted of a conspiracy to defraud, by means of a false affidavit of increase on the taxation of the costs in an action, but it appeared the indictment was not preferred until more than two years after the offence, and emanated from malicious motives, and that he had made all the reparation in his power. The Court held, that the justice of the case would be satisfied by a suspension from practice for 12 months.*

THIS was a rule nisi to strike Wm. Henry Orchard, an attorney, off the roll, who had been convicted of a conspiracy to defraud by means of a false affidavit of increase in an action of *Orchard v. Rackstraw*. It appeared that the affidavit was sworn by Mr. Orchard's articled clerk, and deposed that certain witnesses had been paid, and on the taxation Mr. Orchard had stated to the defendant's attorney that all the witnesses had been paid. A reference was made to the Master, who now made his report.

*James, Q.C.*, and *G. Francis* showed cause against the rule, which was supported by *James P. Wilde* on behalf of the Incorporated Law Society, who admitted that, under all the circumstances, a lenient view might be taken of the case if the Court so pleased.

The Court said:—"The offence of which Mr. Orchard was found guilty was one of a very grave description, and must say that he was convicted on very satisfactory evidence, but at the same time there are circumstances of mitigation which they were most ready to take into consideration. There was not only the length of time that was allowed to elapse, but most undoubtedly there was evidence clearly showing that the prosecutors were actuated by malicious motives, and not to obtain the ends of justice. But they could not forget that this practice, which the Court again and again has reprobated, and which deserves reprobation, of making these affidavits for an increase of costs where costs have not been paid, representing that they have been paid, has become most discredibly common. They hoped that a check has been given to that, and that it will be entirely expunged from the Profession. But they must likewise take into consideration that Mr. Orchard has shown great penitence, he has conducted himself with great propriety since, and he has submitted to



the sentence of the law, and has been precluded for a considerable time, and has been suspended, from the exercise of his Profession. The Court, therefore, under all the circumstances of the case, thought he should be suspended for one year more, and then be readmitted, hoping that it will be understood that the Court expresses its highest displeasure at any such offences, and its determination hereafter to visit them with the severest punishment."

### Court of Common Pleas.

*Morton v. Copeland.* June 4, 1855.

**COPYRIGHT ACT.—ACTION FOR PENALTIES.  
—CONVERSION INTO CIVIL REMEDY BY  
LICENCE.**

*It appeared that the Dramatic Authors' Society, of which the plaintiff was a member, professed to obtain the author's consent to the performance of plays upon payment of certain prices per night, as stated in the schedule to their circular, and the theatre manager made a monthly return of the play bills and paid for the pieces so performed. The defendant performed certain of the plaintiff's plays at his theatre, and on non-payment of the amount claimed for the licence, this action was brought to recover penalties, under the 3 & 4 Wm. 4, c. 15, s. 2: Held, that the parties had converted the penal provisions of the Act into a civil remedy, and a rule was made absolute to enter a nonsuit.*

THIS was an action to recover the amount of penalties, under the 3 & 4 Wm. c. 15, s. 2,<sup>1</sup> incurred by the defendant for performing certain of the plaintiff's plays at his theatre, without his consent in writing first obtained. It appeared that the plaintiff was a member of the Dramatic Authors' Society, which professed to obtain the consent of the authors to the performance of their plays at certain prices contained in a schedule to their circular, and that theatre managers made monthly returns of their play bills, and paid the amount due for such licence. The defendant performed

<sup>1</sup> Which enacts, that "if any person shall, during the continuance of such sole liberty as aforesaid, contrary to the intent of this Act or right of the author or his assignee, represent or cause to be represented, *without the consent in writing of the author or other proprietor first had and obtained*, at any place of dramatic entertainment within the limits aforesaid, any such production as aforesaid, or any part thereof; every such offender shall be liable for each and every such representation to the payment of an amount not less than 40s.;" "to be recovered, together with double costs of suit, by such author or other proprietors in any Court having jurisdiction in such cases in that part of the said United Kingdom or of the British dominions in which the offence shall be committed."

some of the plaintiff's pieces at the Liverpool Theatre, and on his refusing to pay the amount claimed, this action was brought to recover penalties. On the trial before *Jervis, L. C. J.*, the plaintiff obtained a verdict, with leave to move to enter a nonsuit, and a rule nisi was accordingly obtained on May 22 last.

*Russell* showed cause against the rule, which was supported by *Hawkins*.

The Court said, that the plaintiff was a member of the Society, and that their consent was sufficient under the Act. The licence was to perform and the payment was made afterwards, and the result of this agreement between the parties was to convert the penal provisions of the Act into a civil remedy. The rule would be made absolute to enter a nonsuit.

### Court of Exchequer.

*Matthews v. Livesley.* June 5, 1855.

**TAXATION OF COSTS.—WITNESSES TO LOSS  
OF BILL.—SECONDARY EVIDENCE.**

*In an action on a bill of exchange, it appeared that the bill had been sent to the country attorney in an envelope for production, and his clerk, who opened it had forgotten to take out the bill, which was consequently burnt. The Master on taxation allowed the travelling expenses and attendance of the clerk sending the bill, and of the clerk who opened the envelope, in order to let in secondary evidence: Semble (per Pollock, L. C. B. and Martin, B.), that the defendant was not liable to the costs in question (per Alderson and Platt, B. B.), that he was.*

THIS was an action on a bill of exchange, and it appeared that shortly before the trial, the bill was sent to the country attorney for production on the trial, but that the clerk who opened the letters omitted to take out the bill, which was consequently burnt. On the trial at Stafford, it was, therefore, necessary to prove the loss, in order to let in secondary evidence, and the clerk sending the bill and the one who opened the envelope accordingly were called, and the plaintiff obtained a verdict. The Master, on taxation, allowed their travelling expenses and attendance, whereupon this rule nisi had been obtained to review the taxation.

*Phipson* showed cause against the rule, which was supported by *Pigott*.

The Court (per Pollock, L. C. B. and Martin, B.) said, that the defendant ought not to be called upon to pay costs consequent on the negligence of the clerk of the plaintiff's attorney, and that even the plaintiff should not bear them. But (per Alderson and Platt, B. B.) the Master should not enter into the question of negligence, by which the secondary evidence became necessary, as the true criterion was, whether the evidence adduced was necessary to enable the plaintiff to recover. The rule therefore dropped.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, JUNE 23, 1855.

### REMUNERATION OF SOLICITORS.

THE mode in which solicitors are now paid gives them an interest in opposing improvement, and in continuing antiquated forms and technical modes of proceeding; in fact, to use the words of the late Lord Langdale, it makes it “almost compulsory upon the solicitor, in his own defence, to put his client to very great and unnecessary expense, for the purpose of obtaining some remuneration for services in respect of which he cannot otherwise make a lawful demand.” Such a system, so far as it is allowed to influence the Profession, tends to separate the interest of the client from that of the solicitor in every stage of his employment. On the one hand, the interest of the client is to have his business completed as quickly and with as few technical forms as possible; on the other, the interest of the solicitor is to create delay and to multiply and lengthen forms, in order that by these means he may be paid for services which otherwise would be remunerated inadequately, if at all.

It is now nearly fifteen years since the solicitors commenced their efforts to alter a system of remuneration which they feel to be so objectionable. In December, 1840, at the desire of Lord Langdale (then Master of the Rolls and their official chief), they drew up some suggestions for improving the system of remuneration. The principal of these suggestions was the constitution of a taxing board invested with a most extensive and summary jurisdiction, and with discretion to apportion remuneration according to the nature and importance of the business transacted, to the skill and labour bestowed upon it, and to the responsibility

incurred by the solicitor. These views met the entire approbation of Lord Langdale, and, it is understood, of Lord Lyndhurst, the then Lord Chancellor; and, with the concurrence and assistance of the solicitors, the Six Clerks' Office was abolished, the office of Taxing Master was instituted, and the charges of solicitors, for conveyancing business, were made liable to taxation, by which it was designed that the improved discretionary system intended to be introduced, should be made uniform and applicable to every kind of legal business, and that all the professional acts of solicitors should be under the summary control of the Judges. The communications with Lord Langdale show that, from the first, his lordship assured the solicitors, that “if it should appear that any important improvement in the practice and proceedings of the Court would injuriously affect the fair emoluments of professional men,” they might rely on the Court for giving “just remuneration to counsel and solicitors for services truly rendered by them to their clients.”

After the establishment of the Board of Taxing Masters, Lord Langdale addressed to them a letter (dated 10th November, 1842), requesting them to report to him on the system of costs, “with a view, if practicable, of reducing bills of costs to a true statement of services actually performed, and of charges constituting a fair and just remuneration for the services so stated.” In this letter his lordship points out forcibly, “that the system gives to the solicitor, and every other legal practitioner, a direct interest to increase the length of documents, and the number of steps or proceedings in the transaction of business;”

and "has in many cases made it almost compulsory upon the solicitor, in his own defence, to put his client to very great and unnecessary expense, for the purpose of obtaining some remuneration for services in respect of which he cannot otherwise make a lawful demand."

In full reliance on the intention of the Judges to carry out the principle of remuneration indicated in Lord Langdale's letter, the solicitors assisted in preparing the Act for Consolidating the Law of Attorneys, which subjected conveyancing charges to taxation, and in getting the Bill passed through Parliament in the next year, 1843.

Previously to this Act the charges for conveyancing business, though partly regulated by professional usage, were not liable to taxation. The rule of *quantum meruit* was the only legal test; and in case of dispute, it was decided by a jury. The transfer of the power of the jury to the Taxing Masters, and placing the business under the summary control of the Judges, was the price which the solicitors agreed to pay for introducing the principle of "*quantum meruit*" into the rules for the taxation of costs.

Concurrently with the circumstances already referred to, the Equity Committee of the Incorporated Law Society were occupied through the years 1841, '42 and '43, in preparing suggestions for Lord Langdale and the Judges, and in assisting to draw up the numerous General Orders and Acts of Parliament then made for the improvement of the Court. Among other matters which necessarily came under consideration was the mode of dealing with the Masters' Offices; and though the Committee came to no conjoint action on that subject, yet one of the members drew up and published (in 1841), and distributed among all the Judges and leading members of the Profession, a plan for abolishing the offices and transferring the business into the Judges' Chambers, and for establishing a chamber jurisdiction. This scheme (together with the almost insuperable obstacles presented to any permanent improvement by the present system of remuneration) was strongly pressed by the solicitors on the attention of the Committee of the House of Lords, which sat on the Masters in Equity Jurisdiction Bill in 1851. Lord Brougham, at the close of the inquiry, tendered his own evidence to the Committee, and thus stated the conclusion at which he had arrived:—"After referring to the divided responsibility which the system of Masters created, as one great

cause of delay and expense in the Court, he expressed himself as follows,—“My opinion is clear (with the whole of the evidence) that the other cause is the perfectly faulty mode of remunerating professional men, solicitors especially; but I do not except counsel. This opinion is the result of my whole professional experience and observation, and it is not confined to proceedings in Equity. The subject is one of great difficulty, but it is one of yet greater importance; and I feel assured that, *whatever other changes are effected to improve our system, whether of Equity or Common Law, a large proportion of the evil will remain, unless this difficulty shall be grappled with and overcome.*”

Previously to the Chancery Commission being issued by the Crown, a Committee consisting of thirty solicitors had been selected by the Council of the Incorporated Law Society, from their intimate acquaintance with the practice of the Court, and was deliberating on the improvements which ought to be made. A copy of the Committee's report was transmitted to the Commissioners, and was presented to the House of Commons.

In the report just noticed and in all their communications with the Chancery Commissioners, the solicitors took occasion to state the absolute necessity for a revision of the mode of remuneration concurrently with the alterations in the forms of proceeding, and they were led to believe that, whatever changes took place, the continuance of a full and fair remuneration to them would be provided for.

In 1852, the Act for abolishing the Master's Office, the Equity Jurisdiction Improvement Act, and the Suitors in Chancery Relief Act, received the Royal assent. By section 38 of the first-mentioned Act power is given to the Lord Chancellor, with the advice and consent of the Master of the Rolls, and the Vice-Chancellors or any two of them, to make general orders for regulating the fees and allowances to Solicitors. The moral responsibility for the due and considerate exercise of the powers given is commensurate with their extent and magnitude. In pursuance of these powers various orders were made, the result of which, coupled with the change in the proceedings and practice, has been that the remuneration left to the solicitors has proved utterly inadequate. The solicitors remark, that the Judges of the Courts of Common Law, in

<sup>1</sup> Parliamentary Paper, 1852. No. 216.

exercising similar powers, have consulted the Taxing Masters, and the most experienced attorneys practising in their Courts, and have thus been enabled to settle scales of fees which have given general satisfaction to the suitor as well as to the attorney.

It may be well to advert to the legal nature of the solicitor's title to his fees, and to consider whether the interest of this officer of the Court in those fees differs from that of all the other Court officers. The Clerk in Court was originally a solicitor who had established a partnership relation with a six clerk. Till the office was abolished, the Great Seal and the Courts of Law alike admitted that both six clerks and clerks in Court had a legal interest in their fees, and refused to exercise the power of modifying the practice, so as to injure them; and when the officers were abolished, they received full compensation. It is submitted, that the solicitor has an equal legal interest with the clerk in Court to have his remuneration for actual work preserved.

Whether the very exceptional rule—which deprives solicitors of the right, common to all the rest of the world, of fixing their own rate of remuneration, either by contract with their employer, or by the application of the principle of *quantum meruit*,—should be continued in its present full force, may be open to grave question; but it can hardly be contested that, so long as this rule prevails, the solicitors should be secured against any injurious exercise of the very serious and important power under which such orders as those complained of are made.

The number of years and great outlay devoted to the special education of solicitors, the capital necessarily embarked in carrying on their profession, and the exceptional provision directed exclusively against them, by means of which the only other path of life which might be open to them (the Bar), is virtually closed,—all these combine to make it a matter of bare justice that they should be able to rely, with confidence, on the sufficiency of the remuneration assigned to their employment.

Papers have been submitted to the Equity Judges showing the comparative profit allowed under the scale of fees before 1852 and since; but they will only show this in part, for many fees have been entirely abolished without any substitute, and no comparative statement is made in that respect. States of facts, abbreviation of pleadings, warrants, orders for confirmation of reports,

and many similar proceedings have been abolished. These were for the main part purely mechanical work; and the fees upon them served to make up a fair remuneration for the more important work which required the time and attention of the solicitor,—and which otherwise would have been, and still is, insufficiently paid for. The solicitors have still the same material work to do, but no sufficient remuneration is allowed for it.

It ought always to be borne in mind, that a fee is by no means a mere remuneration for the particular service denoted by it, but it also covers all work intervening between the earning of the last previous fee in the cause, and the earning of the one in question. It is in the nature of a toll, which pays not only for the use of the road at the spot where it is taken, but for the use of all the road from the place where the last toll was taken. The intermediate work, *for which no charge is now allowed to be made*, is very often the most important to the interest of the client, and the most expensive to the solicitor. All such work as the receiving, considering, and writing all the letters and documents accessory to the progress of a cause—the keeping of all letters, indexing, &c., and the making all entries in books, the making out and copying of bills of costs, is necessarily incidental to the practice of a solicitor, and must, together with the interest of capital, rent, and office expenses, clerks' salaries, and allowance for bad debts, be covered by the pay in some way or other; and it is the existence of what may be called this dead weight, for which no pay is allowed, that contributes to make the new fees so inadequate.

Under the present system this singular anomaly arises—that the more *slowly* and the *worse* the work is done by the solicitor, the *better* it pays him. An incompetent clerk costs *least* and earns *most*. For instance, to be so well prepared for the Judge's Chief Clerk, that the solicitor can get through an account, pedigree, or any other matter of detail, in one sitting, may require perhaps a week's previous preparation. For such preparation the solicitor was never allowed any fee<sup>a</sup>—while if the preparation were omitted, and that preparatory work really done in the officer's presence, the solicitor was paid for it; it is the public officer's

<sup>a</sup> By the General Order of February, 1855, the Judge may allow a fee not exceeding ten guineas in particular cases; but the allowance ought not to be restricted to those cases, nor should the amount be limited.

time only that is wasted. The scale and table of fees constructed by the Orders of October, 1852, were opposed, in their principle and tendency, to those for which they were substituted; for under the old system, if a solicitor prepared a long and intricate report, and settled it at one sitting before the Master, his fees were the same as if he had had the whole number of warrants and attendances which the length of the report justified, and thus he had the inducement of despatch, which is taken away by the operation of the present system.

We last week laid before our readers a summary of suggestions submitted in March, 1854, for re-modelling the present system of remuneration.

The changes proposed do not necessarily involve the introduction of the *ad valorem* principle of charge; but objections have been made to that principle upon grounds which show that the suggestions of the solicitors in this respect have been misapprehended. It seems therefore desirable to state more explicitly that it has never been proposed to apply the principle to what may be termed *contentious or litigated* business; but to confine it to those cases in which the duties of the solicitor are mainly *administrative*, or which relate to the sale, purchase, settlement, or administration of property, whether in or out of Court.

In advocating within these limits the application of a system of *ad valorem* charges, the solicitors feel confident that they are following the direction indicated alike by the present state of public opinion and by the experience of the Court itself. The Select Committee of the House of Commons, by their report, of 1848, on the "Taxation of Suitors in the Courts of Law and Equity by the Collection of Fees," reported as their opinion that the amount required for the maintenance of the Court of Chancery which the income of the Suitors' Fund is insufficient to pay, should be raised primarily by a poundage of a half per cent. upon all capital sums paid into Court; and on the income collected by the Accountant-General and receivers of the Court. Accordingly, the Court fees levied on the passing of receivers' accounts, which were previously regulated by the length of the accounts, have been commuted for a fee of one-half per cent. upon the annual rental. Upon the taxation of solicitors' costs, the fees which, in the hands of the clerk in Court, were fixed by the length of the Bill of costs, are now levied by means of a per

centage on the amount. In lunacy, also, the system under which one-half of the Court fees was levied by a per centage on the lunatic's income, has been found to work so well, that latterly the whole of the Court fees are levied by the same method. The receivers of the Court of Chancery have (like other receivers) always been paid by a per centage on the rental collected. In the probate and administrative business of the Ecclesiastical Courts, which it is now proposed to transfer to the Court of Chancery, the fees are fixed upon an *ad valorem* scale, and it is understood that this system will be continued on the transfer of the business to the Court of Chancery. The mode of paying architects, brokers, receivers, and all agents whose employment relates to property in any form, is almost invariably by means of a per centage. In fact, the solicitors believe that whenever an opportunity has been afforded to the public to fix the rate or mode of pay for work done in connection with property, the *ad valorem* principle has been invariably adopted as affording the natural and simple index to the value of the services rendered. The solicitors think that the principle of remuneration adopted by the Court and the public as the best for paying its other officers or agents is equally applicable to themselves, in analogous cases.

On the several grounds before stated, the solicitors submit that the Orders of 1852 ought at once to be revised; and they ask that no orders for a similar purpose should be made in future, until, by seeing them in draft, they have had the opportunity of being heard upon any objections which they may have to make to them.

The importance to the public, as well as to the Profession, of a revision of the existing system of remuneration has been universally admitted.

The effect upon the Profession of the recent changes is so serious and injurious—they have been decided upon with so little inquiry—without, as is believed, consulting with the persons most skilled and experienced in the subject—certainly without an opportunity afforded to the parties chiefly affected by them being heard, that the solicitors cannot believe that their respectful, but firm and earnest, appeal to the justice of those to whom the Legislature has confided an important duty will have been made in vain.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### NEWSPAPER STAMP DUTIES.

18 VICT. c. 27.

Not to be compulsory to print newspapers on stamps; s. 1.

Periodical publications printed on stamps to be transmitted by post free of postage; s. 2.

Periodical publications entitled to free transmission by post to be printed under certain limitations and conditions specified; s. 3.

Paper to be stamped for such periodical publications at the request of the proprietor or printer. Discount to be allowed on stamps in Ireland; s. 4.

Periodical publications to be posted within 15 days after being published; s. 5.

Questions as to periodical publications, how determined; s. 6.

Newspapers may be registered at the General Post Office to entitle the same to the privilege of transmission abroad under treaties with foreign powers; s. 7.

Transmission by post of printed papers to foreign countries; s. 8.

Power to the Postmaster-General, with consent of Treasury, to make regulations for carrying the Act into effect; s. 9.

Periodical publications sent by post not in conformity with this Act to be charged letter rates of postage; s. 10.

*London Gazette* to be evidence of the issuing of warrants or orders; s. 11.

Interpretation of terms; s. 12.

The following are the Title and Sections of the Act:—

An Act to amend the Laws relating to the Stamp Duties on Newspapers, and to provide for the Transmission by Post of printed periodical Publications. [15th June, 1855.]

Whereas it is expedient to amend the Laws relating to the Stamp Duties on Newspapers, and to provide for the transmission by post of printed periodical publications: Be it therefore enacted, as follows:—

1. From and after 14 days after the passing of this Act it shall not be compulsory (except for the purpose of free transmission by the post) to print any newspaper on paper stamped for denoting the duties imposed by law on newspapers, and no person shall be subject or liable to any penalty or forfeiture for printing, publishing, selling, or having in his possession any unstamped newspaper.

2. Every periodical publication hereinafter mentioned which shall be printed within the United Kingdom on paper stamped for denoting the rate of duty now imposed by law on

newspapers shall be entitled to the like privileges of transmission and re-transmission by the post between places in the United Kingdom, either postage-free or otherwise, on the same terms and conditions and under and subject to the like rules and regulations as newspapers duly stamped are now entitled and subject to under any Act or Acts in force, but under and subject nevertheless to the terms and conditions in this Act contained.

3. Every periodical publication to be entitled to any such privilege as aforesaid shall be printed and published at intervals not exceeding thirty-one days between any two consecutive parts or numbers of such publication, and shall be subject to the same limitations and restrictions with respect to the number of sheets or pieces of paper whereon the same shall be printed, and with respect to the superficies or dimensions of the letter-press thereof, as by any Act or Acts now in force are enacted or imposed with respect to newspapers and supplements thereto; and every such periodical publication shall be entitled to such privilege only on the terms and conditions following; (that is to say,) one of the sheets or pieces of paper on which the same shall be printed shall be stamped with an appropriated die, denoting the stamp duty imposed by law on a newspaper printed on the like number of sheets or pieces of paper and of the like dimensions with respect to the superficies of the letter-press thereof; and on the top of every page of such publication there shall be printed the title thereof, and the date of publishing the same; and such periodical publication at the time when the same shall be posted shall be folded in such manner that the whole of the stamp denoting the said duty shall be exposed to view, and be distinctly visible on the outside thereof; also such periodical publication shall not be printed on pasteboard or cardboard, or on two or more pieces or thicknesses of paper pasted together, nor shall any pasteboard, cardboard, or such pasted paper be transmitted by post with any such periodical publication either as a back or cover thereto, or otherwise.

4. It shall be lawful for the proprietor or printer of any such periodical publication to send to the Commissioners of Inland Revenue, or to such officer as they shall appoint or direct in that behalf, any quantity of paper to be stamped with an appropriated die, to be provided in the manner directed by the third section of the Act passed in the Session of Parliament holden in the 6 & 7 Wm. 4, c. 76, for denoting the rate of stamp duty chargeable on newspapers; and upon payment to the proper officer of the full amount of the stamps required to be impressed on such paper, the said Commissioners or their proper officers shall cause the same to be stamped accordingly: Provided always, that there shall be allowed in Ireland, in respect of such appropriated stamps as aforesaid for any periodical publication which shall be printed and published only in Ireland, the same rate of discount as by the said last-mentioned Act is directed

to be allowed on the purchase of stamps for the printing of newspapers in Ireland.

5. Every periodical publication, posted in the United Kingdom, to be entitled to the privilege of transmission by the post between places in the United Kingdom, under the provisions of this Act, shall be put into a post office within 15 days next after the day on which the same shall be published; the day of publication to be determined by the date of such publication.

6. In all cases in which a question shall arise whether a printed paper is entitled to the privilege of a periodical publication, so far as respects the transmission thereof by the post under the provisions of this Act, the question shall be referred to the determination of the Postmaster-General, whose decision, with the consent of the Commissioners of her Majesty's Treasury, shall be final.

7. And whereas certain treaties and arrangements have been made and entered into, and other treaties and arrangements may hereafter be entered into, by and between her Majesty's government and certain foreign and colonial governments, for regulating the transmission of British newspapers abroad; and it is expedient to make provision for enabling her Majesty's Postmaster-General to secure for such newspapers respectively the privileges and advantages of such treaties and arrangements: Be it therefore enacted, that, upon the Postmaster-General being satisfied that any printed publication is a newspaper, or entitled to the privileges of a newspaper, within the meaning of such treaties and arrangements as aforesaid, it shall be lawful for the proprietor or printer of such newspaper or publication, if he shall think fit, to register the same at the General Post Office, London, in such form and with such particulars relating to the same, and subject to the payment of such fees, not exceeding 5s. respectively, as well on registration as afterwards periodically for being continued on the register, as the Postmaster-General, with consent of the Commissioners of the Treasury, shall from time to time direct or require in that behalf; and thereupon such newspaper or publication, being printed on paper duly stamped with an appropriated die under the provisions of this Act, shall be entitled to all the privileges and advantages secured to newspapers by any such treaties and arrangements as aforesaid.

8. It shall be lawful for the Commissioners of her Majesty's Treasury, by warrant under their hands, to allow any printed newspaper (British, colonial, or foreign) to be transmitted by the post between places in the United Kingdom and her Majesty's colonies or foreign countries, or between any ports or places beyond the sea (whether through the United Kingdom or not), either free of postage or subject to such rates of postage not exceeding 2d. for each newspaper, irrespective of any foreign or colonial postage, as the Commissioners of the Treasury, or the Postmaster-General with their consent, shall from time to

time think fit; and as a condition to any British newspaper being transmitted by the post to any place out of the United Kingdom, the same shall be printed on paper duly stamped with an appropriated die under the provisions of this Act, and the said last-mentioned Commissioners or the Postmaster-General may require such newspaper to be registered at the General Post Office in London in such form and with such particulars and subject to the payment of such fees as in the last preceding section mentioned.

9. It shall be lawful for her Majesty's Postmaster-General, with the consent of the Commissioners of her Majesty's Treasury, at any time or times hereafter to make and issue such orders, regulations, conditions, and restrictions as he shall deem to be necessary or expedient for the purpose of regulating the receipt, transmission, and delivery by post of periodical publications under the provisions of this Act, or for preventing or detecting frauds or abuses in relation thereto, and for giving effect to the purposes of this Act; and it shall also be lawful for the said Postmaster-General, with the like consent, from time to time to rescind or revoke all or any such orders, regulations, conditions, and restrictions, and to make and issue any new ones in lieu thereof.

10. All periodical publications sent by post otherwise than in conformity with the terms, conditions, and regulations established by or under the authority of this Act may be detained by the Postmaster-General, and any officer of the Post Office; and after being opened, the same shall be either returned to the senders thereof or forwarded to the place of their destination charged with the like rates of postage as if the same were letters transmitted by the post: Provided always, that it shall be lawful for the Commissioners of her Majesty's Treasury, by warrant under their hands, to authorise her Majesty's Postmaster-General to charge in any such case any such less rate of postage as to him shall seem fit.

11. Any printed copy of the *London Gazette* in which any warrant or order issued or made under or by virtue of this Act, or purporting so to be, shall be published, shall be admitted as evidence by all Courts, Judges, Justices, and others, of such warrant or order, and of the due making and issuing thereof, and of the contents thereof, without any further or other proof of such warrant or order, or of the matters therein contained.

12. The term "periodical publication" used in this Act shall be construed to mean and include a newspaper as defined by the Acts in force relating to the stamp duties on newspapers, and every printed literary work or paper, printed and published periodically, or in parts or numbers, at intervals not exceeding 31 days between any two consecutive papers, parts or numbers of such literary work or paper; and for all the purposes of this Act the Islands of Guernsey, Jersey, Alderney, Sark, and the Isle of Man shall respectively be deemed to be part of the United Kingdom.

**SEWERS (HOUSE DRAINAGE).**

18 VICT. c. 30.

Power to Metropolitan Commissioners of Sewers to carry on certain works, at expense of owners, &c.; s. 1.

Commissioners may simultaneously execute works of improvement common to several messuages, and divide the expense among the owners or occupiers; s. 2.

This Act and 11 & 12 Vict. c. 112, to be construed as one; s. 3.

The following are the Title and Sections of the Act :—

An Act to empower the Commissioners of Sewers to expend on House Drainage a certain Sum out of the Moneys borrowed by them on the Security of the Rates, and also to give to the said Commissioners certain other Powers for the same Purpose.

[15th June, 1855.]

Whereas it is of urgent importance to the health of the metropolis that powers of house cleansing, drainage, and improvement should be forthwith actively exercised by the Metropolitan Commissioners of Sewers, for the purpose of executing in houses which may appear exposed to the ravages of zymotic diseases, such palliative and preventive works, either temporary or permanent, as the time admits of, to obviate the outbreak and spread of such epidemic disorders: Be it therefore enacted as follows:—

1. That the Metropolitan Commissioners of Sewers be and they are hereby empowered to carry on forthwith such works as aforesaid, and they are hereby authorised to employ on such works a sum not exceeding 25,000*l.* out of the moneys in their hands borrowed on the security of the rates, charging the cost of such works in each case upon the owner or occupier, as hereinafter provided.

2. To facilitate the execution of such works in cases where it shall appear to the Commissioners, on the presentment of one of their engineers, that it is requisite or proper to execute such works or any of them in several messuages, tenements, or premises situate in the same road, street, or place, or in contiguous or neighbouring streets, roads, or places, as combined works, or works of improvement common to several messuages, tenements, or premises, and for that purpose to construct, perform, or execute any sewers, drains, water-closets, apparatus, or other works of improvement, whether temporary or permanent, simultaneously or in combination or conjunction, and that such works can be executed for such a sum as the Commissioners shall deem reasonable and proper in that behalf, it shall be lawful in all such cases for the Commissioners to give notice to the owners or occupiers of such messuages, tenements, and premises of their intention to execute such works, and to charge them or some of them with the expenses

thereof; and the Commissioners shall appoint a time and place for receiving objections in writing, which any party interested in such messuages, tenements, or premises, or any of them, may desire to offer, and at the appointed time and place the Commissioners shall receive and consider such objections, if any, and may execute, abandon, or alter such intended works, and if they shall execute such works shall ascertain the expenses incurred thereby, and shall divide such expenses among the owners or occupiers of such premises respectively, in such proportions as they may deem equitable and reasonable; and the amount imposed upon any such owner or occupier shall be paid by an improvement rate upon such premises, or as charges for default, as the Commissioners shall in that behalf direct and decree.

3. This Act shall be deemed to be incorporated with "The Metropolitan Sewers Act, 1848," and shall be construed and taken as if this Act and "The Metropolitan Sewers Act, 1848," were one Act.

**VALIDITY OF PROCEEDINGS (HOUSE OF COMMONS.)**

18 VICT. c. 33.

For removal of doubts as to the validity of certain proceedings in the House of Commons during the absence of Mr. Speaker.

The following is the Title and Section of the Act :—

An Act to prevent Doubts as to the Validity of certain Proceedings in the House of Commons. [15th June, 1855.]

Whereas the House of Commons on the 4th August, 1853, her Majesty having previously signified her consent that the House might do therein as they should think fit, resolved as follows:—"That whenever the House shall be informed of the unavoidable absence of Mr. Speaker, the Chairman of the Committee of Ways and Means do take the chair for that day only, and in the event of Mr. Speaker's absence continuing for more than one day do, if the House shall think fit and shall so order it, take the chair in like manner on any subsequent day during such absence:" and whereas on the 4th of this present month of June, Mr. Speaker being unavoidably absent by reason of indisposition, the Right Honourable Henry FitzRoy, being the Chairman of the Committee of Ways and Means, took the chair in pursuance of the said resolutions: and whereas the House on the same day further resolved as follows; viz.—"That in the event of Mr. Speaker's absence continuing for more than this day, Mr. FitzRoy do take the chair on each subsequent day during the present week:" and whereas the said Right Honourable Henry FitzRoy did, in consequence of the continued absence of Mr. Speaker, on each subsequent day during the said week take the chair, and perform



therein certain duties appertaining to the office of Speaker: and whereas doubts may arise as to the validity of Acts done or proceedings taken by or in the House during the time aforesaid in relation to certain matters regulated by Statute: be it enacted, that all Acts and proceedings which according to the provisions of any Statute are required to be done or taken in the House of Commons with their Speaker in the chair, and which have been done or taken by or in the House while the said Right Honourable Henry Fitzroy was in the chair as aforesaid, shall be and shall be deemed to have been as valid and effectual for all purposes as if Mr. Speaker himself had been in the chair during the time when such Acts and proceedings respectively were done and taken.

### CINQUE PORTS' BILL.

THIS Bill proposes to enact as follows:—

From and after the 30th September, 1855, all jurisdiction and authority of the Lord Warden of the Cinque Ports and Constable of Dover Castle in the administration of justice in actions, suits, or other civil proceedings at law or in equity, or the execution of judgments, writs, and process connected therewith, shall cease, except as to writs of *feri facias* directed to and received by him on or before the 30th September, 1855; s. 1.

From and after the 30th September, 1855, writs in all actions, suits, and civil proceedings shall be directed and obeyed, and the jurisdiction of the Courts of Common Law and Equity, and of the Judges, and judgments and process in relation to such actions, suits, and proceedings, shall extend and be exercised and executed in the Cinque Ports, Winchelsea, and Rye, and their several members and liberties, in like manner to all intents and purposes as such writs, jurisdiction, judgments, and process are now directed, obeyed, exercised, and executed in other places in England; and the sheriff and other ministers of counties shall, in the execution of such judgments, writs, and process, and for all other purposes of civil justice, have the like powers within the Cinque Ports, the said towns, and their several members and liberties, as they respectively have in other parts of their counties; s. 2.

On the petition of the inhabitants within the Thanet division of Dover, which comprises the parishes of Saint John the Baptist (called Margate), Saint Peter the Apostle, Birchington, Acol otherwise the Ville of Wood, or within the brough of Fordwich, or the parishes of Serre, Beakesbourne, and Grange otherwise Grench, her Majesty may order that such parishes or one or more of them to be deemed part of the said county; s. 3.

The justices of Kent empowered to levy county rates in the parishes and places which may be severed from Dover; s. 4.

51 Geo. 3, c. 36, s. 5 & 6 Wm. 4, c. 135, and sect. 11 and part of sect. 10 of 6 & 7 Wm. 4,

c. 105, repealed as to places severed from Dover; s. 5.

Places severed from Dover to continue liable to existing debt; s. 6.

Saving as to persons committed or held to bail in places separate from Dover; s. 7.

Compensations to any persons who may sustain by reason of the passing of this Act, or of any such order or charter, any loss of fees, emoluments, or advantages accruing from offices holden by them, having regard to the tenure and nature of such respective offices to be paid out of moneys provided by Parliament; s. 8.

Prisoners in gaol of Dover Castle to be removed to county gaol; s. 9.

Saving the rights of the Lord Warden under any Act relating to the adjustment of salvage, or any jurisdiction, power, or authority of the Court of Admiralty of the Cinque Ports, or of any of the officers of such Court, or the rights of the said Lord Warden to or in respect of Flotsam, Jetsam, and Lagan; s. 10.

### PARLIAMENTARY RETURNS.

#### COURT OF CHANCERY.

THE following are the Returns to an Order of the House of Commons, dated 10th May, 1855.

1st. Of the Total Sum due or paid for Salaries and Office Expenses under the Act 5 & 6 Vict. c. 103, since the passing of the Act, up to the 25th Nov. 1854, 308,714*l.* 1*s.* 6*d.*<sup>1</sup>

2nd. The Total Sum paid for Compensation for Loss of Offices and Profits to Officers under the same Act, since the passing thereof, up to the 25th day of November, 1854, 471,262*l.* 5*s.* 8*d.*

3rd. Of the Total Sum paid to each of the late Sworn Clerks appointed Taxing Masters, for Salaries and Compensation, collectively and together, since passing the said Act, to the 25th November, 1854.

	£	s.	d.
Salary to George Gatty . . . . .	10,027	3	5
Compensation to ditto . . . . .	64,208	17	5
<b>Total . . . . .</b>	<b>74,235</b>	<b>0</b>	<b>10</b>
Salary to Henry Ramsay Baines . . . . .	24,027	3	5
Compensation to ditto . . . . .	62,520	18	2
<b>Total . . . . .</b>	<b>86,548</b>	<b>1</b>	<b>7</b>
Salary to John Wainewright . . . . .	24,027	3	5
Compensation to ditto . . . . .	48,057	17	2
<b>Total . . . . .</b>	<b>72,085</b>	<b>0</b>	<b>7</b>

<sup>1</sup> This sum does not include the amount of expenses from 25th November, 1853, to the 25th November, 1854, as they are not distinguishable from the expenses of the other offices of the Court, but includes the sum of 72,145*l.* 4*s.* 5*d.* paid to stationers for copying, &c., up to the 25th Nov. 1854.

	£	s.	d.
Salary to Richard Mills . .	24,027	3	5
Compensation to ditto . .	55,029	16	10
<b>Total . . . .</b>	<b>79,057</b>	<b>0</b>	<b>3</b>

These sums are included in the total sums due and paid for salaries and compensation for loss of office.

4th. The total sum due or paid for Salaries, Office Expenses, and Compensations respectively, under the said Act.

Salaries from the 25th day of November, 1842, to the 25th day of November, 1843 . . . .	£	s.	d.
Office expenses, ditto . . . .	8,977	17	4
Compensations, ditto . . . .	46,509	16	1
<b>Salaries from the 25th day of November, 1853, to the 25th day of November, 1854 . . . .</b>	<b>24,488</b>	<b>6</b>	<b>10</b>
Office expenses, ditto . . . .	4,586	10	2 <sup>3</sup>
Compensation, ditto . . . .	33,944	6	7

<b>Diminution in amount of Compensations between 1843 and 1854 . . . .</b>	<b>12,565</b>	<b>9</b>	<b>6</b>
--	---------------	----------	----------

5th. Of the Annual Amount of Compensation awarded to each of the said Taxing Masters under the said Act, in the event of their ceasing to hold the said office, and of the Annual Sums to be paid to the Personal Representatives of each of them, as Compensation after their Deaths, and for what number of Years after their Deaths such payments to their Personal Representatives are to continue, and out of what Fund, and by whom, such Payment for Salary and Compensation are now made, and to be made.

*Annual Amount of Compensation in the event of their ceasing to hold office as Taxing Masters.*

	£	s.	d.
Henry Ramsay Baines . . . .	5,403	2	9
George Gatty . . . . .	5,424	14	4
Richard Mills . . . . .	4,935	9	7
John Wainwright . . . . .	4,500	5	1

*Annual Sums to be paid to their Personal Representatives for seven years after their death.*

Henry Ramsay Baines . . . .	2,701	11	5
George Gatty . . . . .	2,712	7	2
Richard Mills . . . . .	2,467	14	10
John Wainwright . . . . .	2,250	2	7

These payments are now made out of the Sutors' Fee Fund, and by the Governor and Company of the Bank of England.

<sup>1</sup> This sum does not contain the whole amount of expenses, as they are not distinguishable from those of the other offices of the Court, but consists of 800*l.* for rent, and 3,786*l.* 10*s.* 2*d.* for copying, &c.

## LEGAL AND GENERAL EXAMINATION.

A HIGHER test of fitness for the Profession being under consideration, it may be useful to state the result of the investigation which has taken place with regard to persons nominated to clerkships in the various offices of Government. This information has been obtained by a return made to the House of Commons on the 2nd May, 1855, Parliamentary Paper, No. 216. We extract the result of the inquiry in several of the departments.

### Treasury.

The candidates are examined in the common rules of arithmetic, such as the rule of three, vulgar and decimal fractions, interest, and discount; and they are required to make an abstract of some official documents, to test their intelligence, and to show that they are able to write and compose correctly.

The general nature of the examination is verbally explained to the candidates, and they are allowed any time not exceeding one month to prepare for it, if desired by them.

### Customs.

Persons nominated to clerkships in the Customs, upon presenting themselves to take up their appointments are at once required to write from dictation in the presence of a properly qualified officer or clerk, and are examined in the principal rules of arithmetic, and the first four rules of decimal and vulgar fractions.

If upon this examination they are able to write fluently, without errors of orthography, and from their answers to the examples in arithmetic there should appear to be reasonable ground to believe that they will be qualified for the situations to which they have been nominated, they are placed on probation for three months; at the expiration of that period they are subjected to a further examination by the principal of the department, of a similar nature, and as to the knowledge they have acquired of their duty, and should they then be found to be fully qualified, and their conduct shall have been satisfactory, they are admitted to office.

### Excise.

Pursuant to Treasury letter, dated 29th December, 1854, no person is fully admitted as a clerk in the Excise (Inland Revenue) Office until he has been examined, and his proficiency has been ascertained in reading, writing, vulgar fractions, decimals, bookkeeping by double entry, writing from dictation, correspondence, geography, and the history of the British Empire. The person nominated by the Treasury is verbally informed, on presenting himself at this office, of the particulars of the examination. If he profess himself already prepared, his examination would proceed forthwith; but should he require an in-

terval for preparation, no objection would be made to allow a short time for that purpose.

#### Post Office.

In respect to the metropolitan post-offices, every person nominated to a clerkship is subjected, as a condition of admission into such office, to an examination in penmanship, orthography, and arithmetic; and if the nomination be to a clerkship in the secretary's department of the London office, the candidate is also required to draw up a summary of some official case from the original documents.

A candidate who passes the examination described above receives a conditional appointment, but at the end of three months a further report is made as to his competency before his appointment is confirmed.

No formal notice is given of the first examination, but on passing it the candidate receives notice of the second.

#### Admiralty.

All gentlemen hereafter to be appointed to junior clerkships in the *secretary's department of the Admiralty, at Whitehall*, are to undergo an examination, conducted by the Admiralty inspector of schools (the Rev. Dr. Woolley) and one of the senior clerks, who will be specially named for the purpose.

The subjects of examination and the number of marks to be assigned to each subject are to be as follows:—

A. Writing from dictation from an English author . . . . .	50
B. Making a <i>précis</i> or digest of papers or correspondence . . . . .	60
C. Arithmetic, consisting of addition, subtraction, multiplication, division, reduction, rule of three, vulgar fractions, and practice . . . . .	50
D. English history . . . . .	40
E. Geography . . . . .	40
F. Translation from Latin . . . . .	20
G. Translation from French . . . . .	40

Total . . . . . 300

The total number of marks is to be 300, and of these 100 must be obtained to qualify for an appointment.

The numbers to be reported to the Board of Admiralty in every case, and if a candidate shall pass a superior examination, or display peculiar excellence in any of the subjects of examination, a special report is to be made for their information.

All gentlemen hereafter to be appointed to junior clerkships at *Somerset House* are to undergo an examination, conducted by the Admiralty inspector of schools (the Rev. Dr. Woolley) and one of the senior clerks, who will be specially named for the purpose.

The subjects of examination and the number of marks to be assigned to each subject are to be as follows:—

A. Writing from dictation from an English author . . . . .	50
--	----

B. Making a <i>précis</i> or digest of papers or correspondence . . . . .	60
C. Arithmetic, consisting of addition, subtraction, multiplication, division, reduction, rule of three, vulgar fractions, and practice . . . . .	60
D. Decimal fractions, interest and discount, annuities, exchange, and system of double entry . . . . .	60
E. English history . . . . .	30
F. Geography . . . . .	40

Total . . . . . 300

The total number of marks is to be 300, and of these 100 must be obtained to qualify for an appointment.

The number of marks obtained are to be reported to the Board of Admiralty in each case, and if a candidate shall pass a superior examination, or display peculiar excellence in any of the subjects of examination, a special report is to be made for the information of the Lords Commissioners of the Admiralty.

#### India Board.

All appointments are made probationary for one year, to be revised at the end of that period, and to be cancelled, if requisite, for the public service.

#### Foreign Office.

Although persons nominated to clerkships in the Foreign Office are not subjected to any preliminary examination, a rule has been laid down by Lord Clarendon, and applied to all appointments during the last year, that every person nominated to a clerkship is to be considered as appointed only on probation, and if at the end of six months' trial in the office he is found to be unfit, his appointment is to be cancelled.

#### Colonial Office.

Persons nominated to clerkships in the Colonial Office are not subjected to examination as a condition of admission into that office; but all persons nominated to clerkships are compelled to perform a probationary service of one year, after which period they are either appointed on the establishment of the office, or their further services are dispensed with.

#### Paymaster-General's Office.

The subjects of examination are—

- Practice.
- Rule of three, direct, inverse and double.
- Vulgar and decimal fractions.
- Interest, purchase of stock, and exchange.
- Writing from dictation.
- A *précis* or abstract of some official documents.

Before the term of probation expires, the candidate is examined as to his knowledge of book-keeping.

No particular notice of the examination to be undergone is given. The candidate is apprised of it on his nomination, and usually presents himself for examination within a fortnight or three weeks afterwards.

*Audit Office.*

1. Persons nominated to clerkships in the Audit Office are subjected to a preliminary examination, which comprises handwriting, English composition, and the following rules of arithmetic, viz.: rule of three, practice, interest, and vulgar and decimal fractions.

2. The examination is conducted by a committee of three persons—the junior inspector, the chief clerk, and the bookkeeper. The questions and answers are in writing, and are submitted by the committee, with their report thereon, to the Board for their final decision.

3. The length of notice given to each candidate that such examination will be required is for a period not exceeding six weeks; the notice is by letter, and the six weeks date from the date of the letter.

4. When a candidate is judged by the board to have passed this preliminary examination, he is admitted to probation. The probationary period is one year, on the completion of which a further examination by the committee takes place in foreign exchanges, and book-keeping by double entry. The result of this second examination is submitted to the board in the manner before described, together with a written report from the inspector and senior clerk under whom the candidate has served, as to his general good conduct and abilities. If the board should be satisfied on these points, they report to that effect to the Lords of the Treasury, and recommend the candidate for appointment to the office.

*Registrar-General's Office.*

Subjects of Examination:—1. Writing from dictation; 2. Arithmetic; 3. Geography; 4. History (occasionally).

Mode and length of notice given:—The Examination takes place immediately on the person nominated to a clerkship reporting himself at the office, without any previous notice.

*Ordnance Office.*

1. The candidate is expected to be able to read aloud with proper emphasis and discretion.

2. To write correctly from dictation.

3. To be conversant with the common rules of arithmetic, including vulgar and decimal fractions.

4. To be acquainted with book-keeping by double entry, if appointed to an office of accounts.

5. To be acquainted with geography.

6. To be able to write a letter and make an abstract of correspondence.

7. To give a written or *stud voce* opinion on an ordinary subject, which may be proposed to him for the purpose of testing his general intelligence.

8. The candidate must be between the ages of 17 and 23 years, of which proof must be given by an extract from the parish register, or by a declaration before a magistrate.

9. He must pass a medical examination, in order to ascertain that he has no bodily ailment likely to incapacitate him from service.

10. When the candidate shall have passed the requisite examination, his abilities are to be further tested by one week's employment in each of the following offices, viz.: The Office of the Secretary to the Board, and the Cash Account Office.

11. The result is to be reported to the Board, and, if satisfactory, the candidate is to be admitted as a clerk on probation for 12 months, and a quarterly report is to be made of his conduct and abilities. Should these further reports be also satisfactory, the appointment will be confirmed.

12. In the case of clerks appointed to foreign stations who, either from want of qualifications or from misconduct, may be deemed by the storekeeper unfit to be confirmed in their appointments at the end of the probationary year, a court of inquiry will be assembled, who will report their proceedings, with their opinion, to the Board.

13. In the case of gentlemen who may be appointed to clerkships in the colonies in which they are resident, the examination will be conducted and reported upon by the respective officers at the station.

*War Office.*

Candidates will be examined in English grammar and composition, English history, and the British constitution, geography, and arithmetic.

Questions under the above heads, which vary from time to time, are asked of each candidate, who is also required to write correctly from dictation, and in a clear good hand.

The greatest importance will be attached to superiority in English grammar, English composition, and writing correctly from dictation, and in arithmetic to the extent of a practical acquaintance with the rules of three, practice, interest, and vulgar and decimal fractions.

A candidate will be allowed to indicate any book or subject upon which he may wish to be specially examined.

Against the name of each candidate marks will be placed, showing the number of questions answered correctly and incorrectly.

A candidate, having past his first examination, will be admitted a member of the War Office for one year, on probation, when he may be again examined upon the War Office Regulations, and Army Estimates, and the details of a pay-list. And upon passing this examination, if his conduct, diligence, and general attention to his duty has been such as to obtain the approbation of the principals of the room in which he has been placed, he will be admitted a permanent member of the department.

*Exchequer.*

In case of future appointments of clerks in the Exchequer, my lords desire that the party

nominated shall be considered for the first year as on probation, and not to be confirmed without a report from the Comptroller-General to this Board, stating that he is competent to discharge the duties of his situation with efficiency, and likely to become, after sufficient experience, capable of executing the duties of the higher situations in the office. My lords are also of opinion that, as vacancies may occur in the situations of chief clerk and accountant, no claim arising from seniority should be attended to, but the most competent person should be appointed.

### SWEARING SCOTCH AFFIDAVITS IN LONDON.

MANY of our London readers must have experienced the difficulty of getting affidavits to be used in the Courts in Scotland sworn in London. These documents are principally used in bankruptcy and testamentary proceedings, and are usually sworn in Scotland before the first justice of the peace whom the deponent can find. The justice is entitled to receive the deposition in virtue of what the law of Scotland calls his *voluntary jurisdiction*, a kind of authority for which we cannot point out any analogy in our practice.

It has often been found difficult to persuade a police or city magistrate to take a Scottish affidavit; and some justices for Scottish counties resident in London have absolutely refused to do so. All difficulty is now, however, removed by the recent decision of the House of Lords in *Kerr v. Marquis of Ailsa* (1 Macqueen's Rep. 736), in which it was held, that an affidavit taken in London before a Scottish justice of the peace was valid.

### NOTICES OF NEW BOOKS.

*The Mercantile and Bankrupt Law of France: a Practical Treatise on the Laws and Regulations which Govern Commercial Transactions in France; and on the Proceedings in Faillite and Bankruptcy. Specially designed for the Use of Merchants and Traders.* By HENRY DAVIES, Solicitor; and EMILE LAURENT, Avoué. London: E. Wilson, 1855. Pp. 128.

THIS is a useful volume. The object of the authors has been to state concisely the principles which guide the French tribunals in the determination of questions between English and French merchants, especially in regard to the position in which creditors are placed on the bankruptcy of a French merchant.

The work treats of—

1. General Rights.
2. Sales and Purchases.
3. Transfer and delivery of Articles sold.
4. Warranty of Vendor.
5. Carriage by Land and Water.
6. Time, Place, and mode of Payment.
7. Bills of Exchange and Promissory Notes.
8. Factors or Commissionnaires.
9. Opening of a Credit and Loans on Pledge.
10. Marine Insurances, and Insurances by Land.
11. Partnership, Commercial Associations, and Public Companies.
12. Commercial Suits and competent Tribunals.
13. Law Suits and Proceedings.
14. Law Charges and Expenses.
15. Failures and Bankruptcies.

The general rights of *aliens* are thus described:—

"Aliens enjoy before the French Tribunals of Commerce the same rights as French subjects; and the same principles of law which apply to the latter apply equally to the former.

"The quality of alien makes no difference in the position of a litigant in France, no matter whether as plaintiff or as defendant.

"In one respect, however, the French law makes, in the *preliminary proceedings* of a suit, a distinction between a French subject and an alien, both as regards the person and the goods and chattels of the latter.

"When a French subject claims a debt, no matter of what amount, of the alien, and produces in support of his claim written evidence, either of a nature held to be conclusive, such as a note of hand or an acknowledgment of debt signed by the debtor, or of a character to raise a strong presumption in favour of the claim, such as a bill or invoice extracted from the claimant's books, the French Tribunal will, upon application, grant a warrant of apprehension against the person of the alleged alien debtor, unless the latter has an establishment in France. The Court will also, under the same circumstances, grant the claimant authority to seize and hold in pledge for his protection, the goods and chattels of his alleged alien debtor.

"The alien may in such cases obtain the release of his person or goods, by paying into Court a sum of money equal in amount to the alleged debt. The Court will, under certain circumstances, be satisfied even with a smaller amount being deposited.

"But if the alleged alien debtor, on his part, can show to the satisfaction of the Court that the pretended creditor is not sufficiently responsible, and that the proof of the alleged claim is defective, the Court will, in the in-

terest of the alien debtor, call upon the French creditor also to give proper security.

"Thus, where a Frenchman from motives of malevolence wrongfully claims a debt of an alien, putting him to grave inconvenience, by arresting his person or seizing his goods, the injured party is safe to obtain a just reparation, inasmuch as the Tribunal will inflict damages in proportion to the injury suffered.

"This is so well known in France, that we may safely assert, without fear of any well-founded contradiction, that there are many instances of Frenchmen having had to pay heavy damages in consequence of unjust and vexatious claims preferred against aliens.

"The warrants of apprehension or of seizure are granted by the Judge (who is the president of the Civil Tribunal, specially appointed for that purpose by the law), in the absence of the debtor, but the latter can always, of right, demand to be immediately brought before the Judge, and to raise the question of reciprocal security, should he desire it. Consequently, no arrest of the person or seizure of the goods is ever actually consummated without a previous hearing of both parties before the Judge.

"The authority of the Judge is absolute in the above cases. However, if the arrest of the person or the seizure of the goods of the alien debtor has been effected in an irregular manner, and not in conformity with the proper forms and rules of the law, the aggrieved party may the same day, or the day after, move the Civil Tribunal to annul the proceedings, and the decision pronounced by the Tribunal on this motion, may be referred for revision to the Imperial Court of Appeal, which will give judgment in a few days, and again from the decision of the Imperial Court an appeal lies to the Supreme Court of Cassation; but the judgment of this latter Court is not so promptly given.

"The provisional arrest of the person of an alien debtor and the seizure of his goods are called conservatory measures.

"The independence and integrity of the French Judges are proverbial, and there is so wide a distance between the Judge and the litigants, that no occult influence can be brought to bear upon the decisions of the former.

"Such are, on the one hand, the only exceptional weapons which the laws of France place in the hands of the French creditor against an alien debtor, and on the other hand, the protective dispositions which the same laws have made in the interest of the alien debtor, who is thereby effectively protected from all wrongful molestations and vexatious claims.

"Arrest of the person of a debtor, and provisional seizure of his goods and chattels, may also be resorted to, on the part of an alien creditor, against a French subject, but only under certain conditions,—viz.:

"The personal arrest can only be effected after the alien has obtained a judgment which constitutes him creditor of a sum exceeding 200 francs, or 8*l.* English money, and the pro-

visional seizure of goods only if the debtor is a hawkler, or perambulating dealer, or if he is about to remove his furniture and goods.

"The requisite permission to take the latter measure (seizure of goods and chattels), is obtained, as already stated by application to the Judge.

"To sum up, the only difference which exists between the rights of French subjects against aliens and those of the latter against the former, consists in the *provisional arrest* of the debtor granted to the French, and refused to the alien creditor.

"We have deemed it advisable in the first place to point out this exceptional difference, that we may without restriction or impediment enter upon the consideration of all the other parts and branches of the law which apply equally and without distinction to French subjects and to aliens."

The Chapter on Law Charges and Expenses will be read with some interest. It is there stated that—

"From the extreme simplicity of the forms of procedure in commercial suits in France (see chapter XII.), the law charges and expenses incurred in such suits, and in the execution of the judgments obtained, are very moderate, which is a capital point in favour of the interests of commerce.

"In principle, justice is dispensed *gratuitously*, in this sense, that the Judges are paid by the Government.

"The Judges of the Tribunals of Commerce receive no remuneration whatsoever. Their functions are of a purely honorary character.

"The emoluments or fees of the public officers (attorneys, notaries, apparitors, &c.), charged with the management of law-suits, or with the service of notices, summonses, and other law processes, are very moderate, and are regulated by a tariff, under the inspection of the Judges.

"Counsel's fees are not fixed. The client who consults a counsel or advocate, or engages him to plead his cause before the Tribunal, hands over to him a fee, proportionate to the importance of the case and the talent of the man. Disputes never arise on this point.

"The society of advocates or barristers, wishing to secure for their profession perfect independence and liberty of action, recognises the principle that every one of its members is presumed to afford his professional services gratuitously, and cannot, therefore, maintain an action for remuneration for the same. It never happens that clients take an unfair advantage of this circumstance.

"The most important charges connected with the proceedings in a suit are those imposed by the Government in the shape of *duty*, and which are proportionate to the amount awarded by the judgment of the Court, and in certain cases even to the amount *claimed* by the plaintiff. The following remarks will serve as a guide in this respect.

"Legal proceedings to enforce a bargain or

payment of a bond can be commenced only if the bargain or contract of sale or bond has been provisionally registered. The registration duty is two per cent. on the total amount of the sum involved, in the case of contracts of sale; one per cent. in the case of bonds. On a banking account (*compte de banque*) the duty is two per cent.; on a promissory note (*billet à ordre*) half per cent.; on a letter of exchange, quarter per cent.

"A duty of one-half per cent. is levied besides on the amount awarded by the judgment of the Court, no matter for what cause, except it be in the shape of damages, in which case the duty is raised to two per cent. on the amount of the sum awarded.

"Judgments disposing of disputed points without decreeing payment of a sum of money, are subject to a very trifling fixed duty, varying from two to five francs.

"The stamped paper used in law-suits is also subject to a moderate duty. There are different sizes of stamped paper, which vary in price from 70 centimes (7d.) to 1 franc 25 centimes (1s.).

"These duties constitute the law charges invariably decreed by the Court, and which fall on the losing party. However, the plaintiff, or prosecutor, must always advance them, except in case of inability from indigence."

"The costs incurred in the execution of the judgments of the Courts are moderate, and are also regulated by a fixed tariff.

"The expense of attaching and imprisoning the person of a debtor is about 200 francs (8l. sterling). The maintenance of the debtor in prison costs about 25 francs per month, which the detaining creditor is obliged to pay.

"Upon the whole, the law charges and expenses incurred in commercial suits in France, are by no means heavy, and it happens very rarely indeed that the dread of the law expenses will induce a creditor to refrain from the prosecution of his rights.

"The Government, in its solicitude for the indigent, has lately proposed and carried a law enabling indigent parties to sue *in forma pauperis*, that is, without being obliged to make the least advance for law charges and expenses.

"The public officers and the Government have their remedy for their fees, and for the costs and charges incurred, afterwards, against the losing party, if that party is solvent.

"It has ever been the custom of counsel in France to give gratuitous advice to the poor."

## LAW OF ATTORNEYS AND SOLICITORS.

### GENERAL LIEN ON BILL OF EXCHANGE AS AGAINST CLIENT.

THE plaintiff, Mr. Gibson, agreed to lend a Mr. Moffatt 500l. upon certain terms, and endorsed to him a bill of exchange for 250l. as part of the advance.

Mr. Moffatt afterwards took a lease of his business works, and he deposited with the lessors' solicitors, who also acted for him, the lease, together with the bill of exchange, as a security for the costs of preparing the lease, amounting to 41l. 16s. 2d., which he was to pay. Mr. Moffatt subsequently became embarrassed in his circumstances, and assigned the lease to secure a sum of money. The appellants acted for the assignees and also for Mr. Moffatt in that and other matters, and for the purpose of obtaining the lease they went to the lessors' solicitors and paid their bill of costs, and received the lease, together with the bill of exchange, but without any authority from Mr. Moffatt for that purpose.

The appellants claimed a lien on the bill of exchange for their bill of costs in respect of all the matters in which they had acted for Mr. Moffatt, and afterwards discounted the bill with another defendant, receiving the full amount less the discount. This bill was then filed for delivering up of the bill and for an injunction.

Lord Justice Knight Bruce said,—

"There can be no doubt, so far as I can judge of the facts, that, as between Mr. Moffatt and Mr. Gibson, it became (in point of what is called honour, if not of actual right) the duty of Mr. Moffatt in the state of his circumstances, and with regard to the transaction of the 30 January, 1851, to deliver back the bill of exchange to Mr. Gibson. I do not say that Mr. Gibson had at that time any enforceable right to have it returned, but as between him and Mr. Moffatt his claim had ripened into a right, if not before March 3rd at least on that day. However incorrectly the order of Mr. Moffatt to the appellant dated on that day may have been and probably was worded, there is no doubt but that the intention of the transaction was to revert in the plaintiff completely, as between him and Mr. Moffatt, the title to the bill of exchange. And I apprehend that in equity the effect of what was done on that day (if not of what had been done before) was, that although Moffatt had incumbered the bill with a debt from him to the lessors' solicitors, still, as between Moffatt and the plaintiff, it was the duty of Moffatt to discharge the bill of exchange from that lien. This might have created a difficulty but for the fact that the debt of the lessors' solicitors has been discharged notwithstanding out of funds belonging to Moffatt. That being so, all the rights and equities which might have existed if the debt had not been discharged may be dismissed from consideration. Then the case being delivered from all question as to the 41l. 16s. 2d., and from all question as to the title of the plaintiff, the point arises as to the paramount right claimed by the appellants. They claimed it by way of lien, either of dor-

ment lien or of lien by express agreement. But how did they acquire possession of the security, without which there could be no lien? The lessors' solicitors had a demand on Moffatt for the preparation of the lease, and had in their hands not only the lease but the bill of exchange belonging at that time to Moffatt. In the course of the transaction of the business it became material to have the lease, and the appellants went to the lessors' solicitors and took the lease, paying their demand. They then found for the first time that the lessors' solicitors had as a security for the same demand this bill of exchange. Now it was an act in the proper discharge of their duty to obtain the lease; and though they had no express authority to do so, it may be that the money which was actually paid gave them not only a personal demand against Moffatt, but gave them also the same rights as the lessors' solicitors had in the lease and the bill of exchange. But they contend that they thereby acquired a general lien upon the bill. To that argument I am unable to accede. The other solicitors held it for a specific purpose, and upon an express contract. The appellants could not without the sanction of their client obtain any better or higher right than the other solicitors had. In *Stevenson v. Blake-lock*, 1 Man. & S. 535, there was an express authority to complete the transaction as it was completed.

"It is said that the right of the appellants was at all events converted afterwards into a general lien by express agreement. On that point the evidence is contradictory. This, however, was a dealing between solicitor and client, and I apprehend that before it was competent for the appellants to enter into a binding agreement with Moffatt, it was incumbent upon them fully and exactly to explain to him his rights. This does not appear to have been done. Without intending any disrespect to these gentlemen, I am of opinion that claiming such a right they must clearly prove their case, and they have not done so to my satisfaction. On these grounds the plaintiff has, I think, established his title, not merely against Moffatt, but against the 'appellant.'" *Gibson v. May*, 4 De G. M'N. & G. 512.

## UNITED LAW CLERKS' SOCIETY.

### TWENTY-THIRD ANNUAL REPORT OF THE COMMITTEE OF MANAGEMENT.

The Committee respectfully submit to the Patrons and Members a Report of their proceedings during the past year, being the twenty-third of the Society's existence.

The number of members who in the past year claimed relief on account of sickness has been 25. 121*l*. 7*s*. 6*d*. has been expended in meeting these claims—considerably less than was required in the two preceding years. Each applicant receives one guinea weekly, so long as his illness disables him from following his

employment, but not exceeding one year. Should it extend over that period, the member is entitled to half the amount during a second year; and if his affliction assume a permanent character, then he is entitled to relief for life out of the Superannuation Fund. Two of these cases of sickness terminated in the members being placed on that fund, and three others ended in death. The total relief afforded to the members on account of sickness alone amounts to the sum of 3,349*l*. 16*s*. 6*d*.

The claims on the Superannuation Fund are increasing. Last year there were five—there are now seven—requiring a yearly expenditure of 239*l*. 4*s*. In three of these cases the members receive yearly 31*l*. 4*s*. each, and the remaining four 36*l*. 8*s*.; this relief is payable weekly, and is granted to all members who may be permanently disabled by incapacity of any kind from following their employment, and continues for life. It is not dependent on any election or the attaining any particular age. Not one of these superannuated members is disabled by old age, one is so from loss of sight, the others from loss of mind.

The Committee were able to announce at the last anniversary, that in the year preceding not one death had occurred amongst 524 members. On this occasion they have to report the death, since the last festival, of six members. The family of each received the sum of 50*l*. The Committee have also to report the death of the wives of five members, to each of these members the sum of 25*l*. has been paid. The total expenditure on account of death has reached the sum of 4,927*l*. 10*s*.

Every member is entitled to participate in all the benefits; the receiving relief in sickness does not interfere with his right to superannuation in permanent infirmity, nor does the receipt of both in any way diminish the relief his family are entitled to on his decease.

The Committee regret the loss, by death, of Mr. Thomas Clarke (the late Solicitor to the Board of Ordnance), one of their Trustees. Mr. Clarke was one of the Society's earliest and warmest friends, he was a subscriber from the beginning, and upon several occasions rendered it the most valuable services. The Committee have the pleasure of stating, that Mr. George Herbert Kinderley has kindly consented to become Trustee in the place of Mr. Clarke.

The Committee are happy to report, that although the past year has been one of great pecuniary pressure, there has been no falling off in the number of donors, and they announce with much pleasure, that the number of members is steadily increasing, and that their total contributions during the year have exceeded 1,200*l*.

The Committee have devoted their best attention to the preservation and increase of the Society's capital, and the increasing number of superannuated members has rendered this most important. On the 3rd April, 1854, the Society's capital amounted to 16,794*l*. 8*s*., since



which there has been received 3189*l.* 18*s.* 8*d.* The expenditure on account of sickness, superannuation, and death, and necessary disbursements, has amounted to 894*l.* 4*s.* 3*d.*; the difference has been added to the Society's capital, all investments of which are made with the Commissioners for the Reduction of the National Debt. These investments, on the 20th May, 1854, amounted to the sum of 16,818*l.* 10*s.* 3*d.*; on the 20th May last, they amounted to 18,168*l.* 19*s.* 2*d.* The importance of increasing these investments is the more apparent when it is stated that the interest of the last year's savings will not more than provide for the yearly allowance of one of the two members superannuated since the last anniversary.

The Casual or Benevolent Fund is a fund formed by the donations of the Profession for assisting all deserving Law Clerks, their widows and families, when suffering from unavoidable distress. Every member also contributes to this fund. The relief afforded consists of gifts of sums of money not exceeding 5*l.* Every application must be recommended by a donor or member, and no applicant receives relief until the Committee are satisfied by careful investigation that the applicant is deserving of it. Forty-eight applications have been received during the year. Of these 41 were from distressed but deserving persons, who were relieved as far as the funds permitted. The remaining applications could not be entertained being ineligible from various causes. Of the applicants relieved, two only were members. The rest were non-members and the widows of law clerks generally. The Committee have also, out of the Casual Fund, granted several small loans to members needing temporary pecuniary assistance, but who would not take it by way of gift. These loans are made without interest or charge, and are repayable to suit the circumstances of the borrower. In these gifts and loans there has been expended, since the foundation of the Society a sum of 5,224*l.* 16*s.*

In April, 1854, the cash in hand belonging to the Casual Fund had been reduced to 39*l.* 6*s.* 6*d.*; the year's receipts have been 387*l.* 9*s.* 5*d.*, and the disbursements 383*l.* 5*s.* 6*d.*; leaving in hand to begin the year 43*l.* 10*s.* 5*d.*

The Committee are constantly adding to the Library various useful practical and other works, from which the members are deriving great advantages.

In conclusion, the Committee return their sincere thanks to the Bench, the Bar, and the Profession at large for the kind support the Society has already received. It has in the course of 23 years expended in actual relief to law clerks, their widows, and families, in the time of adversity and distress, a sum exceeding 13,000*l.*, at the same time gradually setting apart a fund, which it is hoped, places the Society beyond risk. Fully aware that its present satisfactory position could never have been attained without the aid of the Profession, they trust the institution may long re-

ceive a continuance of that support which has been the principal cause of its usefulness and prosperity.

HARRY G. ROGERS,  
*Freemason's Tavern,* Secretary.  
June 13, 1855.

[We shall probably be able, in our next Number to give a full report of the eloquent and appropriate speeches which were made at the Anniversary Meeting on the 13th inst., by Lord Justice Turner, the Chairman, and by Lord Justice Knight Bruce, the Vice-Chancellor Wood, and Sir John Patteson, and by other Patrons of the Society.—*Ed.*]

## SUMMER CIRCUITS OF THE JUDGES, 1855.

### SOUTH WALES.

*Lord Campbell, C. J.*

Thursday, July 12, Cardigan.  
Saturday, July 14, Haverfordwest and Town.  
Wednesday, July 18, Carmarthen.  
Monday, July 23, Cardiff.  
Saturday, July 28, Brecon.  
Thursday, August 2, Presteign.  
Saturday, August 4, Chester and City.

### NORTH WALES.

*Jervis, L. C. J.*

Tuesday, July 17, Newtown.  
Friday, July 20, Dolgelly.  
Monday, July 23, Carnarvon.  
Thursday, July 26, Beaumaris.  
Saturday, July 28, Ruthin.  
Wednesday, August 1, Mold.  
Saturday, August 4, Chester and City.

### OXFORD.

*Pollock, L. C. B. and Erie, J.*

Tuesday, July 10, Abingdon.  
Thursday, July 12, Oxford.  
Monday, July 16, Worcester and City.  
Thursday, July 19, Stafford.  
Thursday, July 26, Shrewsbury.  
Saturday, July 28, Hereford.  
Wednesday, August 1, Monmouth.  
Saturday, August 4, Gloucester and City.

### NORFOLK.

*Parke, and Alderson, B.B.*

Wednesday, July 11, Aylesbury.  
Friday, July 13, Bedford.  
Wednesday, July 18, Huntingdon.  
Friday, July 20, Cambridge.  
Tuesday, July 24, Norwich and City.  
Saturday, July 28, Ipswich.

MIDLAND.

*Coleridge and Maule, J.J.*

Tuesday, July 10, Northampton.  
Friday, July 13, Leicester and Borough.  
Tuesday, July 17, Oakham.  
Wednesday, July 18, Lincoln and City.  
Saturday, July 21, Nottingham and Town.  
Wednesday, July 25, Derby.  
Saturday, July 28, Warwick.

HOME.

*Wightman and Cresswell, J.J.*

Wednesday, July 11, Hertford.  
Monday, July 16, Chelmsford.  
Monday, July 23, Lewes.  
Saturday, July 28, Maidstone.  
Monday, August 6, Croydon.

NORTHERN.

*Platt, B., and Crowder, J.*

Tuesday, July 10, York and City.  
Tuesday, July 24, Durham.  
Monday, July 30, Newcastle and Town.  
Thursday, August 2, Carlisle.  
Monday, August 6, Appleby.  
Wednesday, August 8, Lancaster.  
Saturday, August 11, Liverpool.

WESTERN.

*Williams and Crompton, J.J.*

Tuesday, July 10, Winchester.  
Tuesday, July 17, Dorchester.  
Thursday, July 19, Exeter and City.  
Wednesday, July 25, Bodmin.  
Monday, July 30, Wells.  
Saturday, August 4, Devizes.  
Wednesday, August 8, Bristol.

CANDIDATES WHO PASSED THE EXAMINATION.

*Trinity Term, 1855.*

*Names of Candidates.*

Austin, John Henry . . . . .  
Barton, Samuel Henry . . . . .  
Beaumont, John Alfred . . . . .  
Beddome, John Arthur . . . . .  
Birch, Thomas . . . . .  
Cardale, Edward . . . . .  
Davies, Henry Gilbert Rice . . . . .  
Davison, Thomas John Robert . . . . .  
Denman, Thomas William . . . . .  
Eddowes, Charles Kirk . . . . .  
Evans, Robert . . . . .  
Farrer, Frederick Willis, B.A. . . . .  
Foulkes, Arthur David . . . . .  
Fry, John Thomas . . . . .  
Gilchrist, Thomas Barnes . . . . .  
Green, John Thomas . . . . .  
Halliday, Richard . . . . .  
Harrison, George . . . . .  
Harrison George Sandford . . . . .  
Harvey, Edwin John . . . . .  
Heard, Henry . . . . .  
Heddes, Wilberforce . . . . .  
Holden, John George . . . . .  
Hooper, Thomas James . . . . .  
Hooper, William Henry . . . . .  
Jackson, John Beynon . . . . .  
Jackson, William . . . . .  
Jones, John Hughes . . . . .  
Jones, John Stanier . . . . .  
Ladd, Thomas Henry . . . . .  
Lambe, John . . . . .  
Latimer, John . . . . .  
Leaf, Alfred . . . . .  
Leathes, Leonard Stanger . . . . .  
Lowndes, Francis Debeson . . . . .  
Mason, George . . . . .  
Moore, William Playters . . . . .  
Newman, William . . . . .  
Oddie, Edward . . . . .  
Palmer, Robert Peach . . . . .  
Palmer, William Danby, jun. . . . .  
Parher, Thomas, jun. . . . .  
Parsons, Joseph Whiteway . . . . .  
Peace, Maskell William . . . . .

*To whom Articled, Assigned, &c.*

William Bernard Ogden ; Thomas Loughborough  
Robert John Child  
Thomas Smith James  
John Sims Weir  
Robert Riddell Bayley  
John Bate Cardale  
Jonathan Rogers Powell  
John Brooke Hyde  
John Cowper Mee  
Francis Jessopp  
Robert William Peck  
Meaburn Tatham  
James Woods Weston  
John Loxley  
Thomas Gilchrist ; William Willoby  
John Green ; James Currie  
Samuel Fozard Harrison  
Robert Caparn  
James Brown Simpson  
William John Hellyer  
Thomas Edward Drake  
James Chaldecott Sharp  
John Holden  
Henry Sewell  
Henry Augustus Templer  
Robert Jackson  
James Robinson  
Price Morris  
John Jones  
John Sergeant  
Charles Blount  
John Atkinson ; Abraham Horsfall  
Ellis Cunliffe  
Denton, Kinderley, & Co.  
William Gandy Bateson  
William Holt  
Francis George Abbott  
Edwin Newman ; William Elliott Oliver  
Frederick Iltid Nicholl  
David King  
Henry Palmer  
Thomas Parker ; Thomas Burgoyne  
Wm. Tapley Langley ; Joseph Billingley Bullock  
John Mayhew

## Names of Candidates.

## To whom Articled, Assigned &amp;c.

Pearson, Francis Fenwick . . . . .	Francis Pearson; Bryan Holme
Pickop, John . . . . .	William Mosley Perfect
Pinchard, John Henry Biddulph . . . . .	William Price Pinchard
Plumer, John Bagwill . . . . .	John Coles Symes
Popplewell, Henry John . . . . .	William Plaskitt
Powell, Gabriel William . . . . .	David Thomas
Preston, Thomas Hartley . . . . .	Joseph George Snowball
Rhodes, Arthur . . . . .	Henry Masterman
Richardson, James Coke . . . . .	James Richardson
Rising, William Henry . . . . .	William Fretwell Hoyle
Rixon, Augustus William . . . . .	William Rixon
Roberts, Samuel . . . . .	Henry Jackson; Francis William Mount
Robinson, William Joseph . . . . .	Matthew Dobson Lowndes
Rodway, George Wood . . . . .	Rowland Rodway
Rutter, Llewellyn . . . . .	John Farley Rutter
Saunders, Thomas . . . . .	Charles Frederick Chubb
Slade, George Penkivil . . . . .	John Slade; George Robins
Smith, George Henry . . . . .	Robert Henry Anderson
Squire, Edmund Burnard . . . . .	William Worship
Stewart, William James . . . . .	James Berriman Tippetts; Robert Fox Bartrop
Taylor, Henry Ramsay . . . . .	John Taylor
Taylor, Robert . . . . .	James Taylor
Thompson, Robert Fisher . . . . .	Francis Pearson
Tozer, Henry . . . . .	Joseph Edgar; William Jones
Waterhouse, James William . . . . .	Daniel Smith Bockett
Way, William Augustus . . . . .	Henry George Way; William Devereux
Wells, James . . . . .	Charles Gallimore Brown
Whitlow, Edward Hardman . . . . .	Joseph Janion
Williams, Edward . . . . .	Benjamin Chandler, jun.; William Williams
Williams, Edward Withers . . . . .	John Hill
Williams, Robert Edward . . . . .	Philip Protheroe Smith
Wilson, Edmund Law Isaac . . . . .	Richard Williams
Wilson, John James . . . . .	Thomas Harrison
Wood, Henry . . . . .	Joseph Radcliffe Wilson; William Murray
Wood, William Savile . . . . .	John Wood
Yarde, John . . . . .	William Wood
Yearsley, William Pryse . . . . .	John Whidborne
	Joseph Jones; William Yearsley

## NOTES OF THE WEEK.

## PROCEEDINGS IN PARLIAMENT.

MR. LOCKE KING's motion for the preparation of a declaratory Bill for carrying into effect the report of the Commissioners on the Statute Law, showing how many of the 10,047 Acts of Parliament remain in force, was carried by a majority against the Government, the numbers being 43 for and 26 against the resolution.

The intended Bill for the Reform of the Corporation of London has been postponed for the present Session.

The Bills of Exchange and Promissory Notes Bill was under discussion at the morning sitting on Wednesday, and the debate was adjourned. Anything further that may occur will be noticed in the Postscript, with the state of the other Law Bills.

Several Bills stand for discussion on the 22nd, the result of which must be reported next week.

## LAW APPOINTMENTS.

*Charles Saunders, Esq.,* Barrister-at-Law, has been appointed Recorder of Devonport, in the room of Thomas Phinn, Esq.

The Queen has been pleased to nominate and appoint *James Craufurd, Esq.,* one of the Lords of Session, to be one of the Lords of Justiciary in Scotland, in the room of Alexander Wood, Esq., resigned.—From the *London Gazette* of the 19th June.

## LEGAL OBITUARY.

*Erratum.*—We learn that an error has been made in our Obituary. We are glad to be informed that Mr. *Montague Gosset*, of No. 4, Coleman Street, ought not to have been placed amongst the deceased. We have directed inquiries to be made for the purpose of ascertaining how the mistake occurred. The date of this gentleman's admission on the Roll and his age at the time of his supposed death were stated in the list we received, and we had then no reason to doubt its accuracy. We much regret the annoyance thus occasioned to Mr. Gosset.

RECENT DECISIONS IN THE SUPERIOR COURTS.

**Lords Justices.**

*Ex parte Marshall, in re Marshall.* June 8. 1855.

**BANKRUPT.—SUSPENSION OF CERTIFICATE.—MISREPRESENTATION.**

*A bankrupt by his misrepresentations to his petitioning creditor, obtained a continuance of credit : The suspension of his certificate for six months, without protection, by Mr. Commissioner Ayrton, was affirmed with costs.*

THIS was an appeal from the decision of Mr. Commissioner Ayrton suspending this bankrupt's certificate for six months, without protection, on the ground that he had made an incorrect representation of the state of his assets and liabilities in an interview with the petitioning creditor, who had consequently continued to give credit to the bankrupt.

*De Gez* in support; *Giffard* contra.

The Lords Justices said, that the appeal must be dismissed with costs.

**Vice-Chancellor Kindersley.**

*Lawrence v. Maule.* June 12, 1855.

**COMMISSION TO EXAMINE WITNESSES ABROAD.—SPECIAL EXAMINER, WHERE ORAL.**

*In a suit, the claim of L., who was resident in America, was allowed, subject to a commission to prove her case. On a motion for such commission, the plaintiff did not appear, but one of the claimants in the Master's Office asked for leave to attend the proceedings : Held, that leave could not be granted.*

*Where the motion for a commission to examine witnesses abroad asked for leave to examine orally, under the 15 & 16 Vict. c. 86, a special examiner was appointed instead of a commission.*

THIS was a motion to issue a commission to examine witnesses in America, in reference to the claim of Ann Lawrence in this suit, as next of kin of an intestate, and whose claim had been allowed by the Master subject to the issue of his commission to prove her case.

*Fleming* in support, asked that the examination might be taken either orally or by interrogatories, as in the case of special examiners, under the 15 & 16 Vict. c. 86, s. 31. The plaintiff did not appear on the motion.

*Baily* and *Toulmin* for one of the claimants, in the Master's Office, contra, or that he might have liberty to attend the proceedings.

*Wickens* for the Crown.

The Vice-Chancellor said, that the plaintiff must be assumed to have abandoned his claim, and the Crown would do its duty, and there was nothing to entitle the other claimant to attend. On reference to the form of commis-

sion to examine witnesses abroad, it proceeded on the assumption that witnesses were only to be examined on interrogatories. In the present case, therefore, as it was also sought to examine them orally, a special examiner had better been appointed.

**Court of Queen's Bench.**

*Regina v. Governor of the Poor of Hull.* June 6, 12, 1855.

**TOWN CLERK.—REMUNERATION FOR PREPARING LIST OF ELECTORS.**

*Held, that the town-clerk of a borough is not entitled to charge for his own time and trouble, nor for those of his clerks, in the preparation of the list of electors under the 6 & 7 of Vict. c. 18 ; but, if he cannot prepare the same, although using all reasonable exertions, and be obliged to call in the assistance of others, he is entitled to charge for the expenses thereby incurred.*

THIS was a demurrer to the defendant's replication to the plea to a return to this mandamus on the defendants to pay their town-clerk the sum paid by him in the preparation of the list of electors under the 6 & 7 Vict. c. 18, which by sect. 55 provides, that "all the expenses incurred by any town-clerk or returning officer of any city or borough in carrying into effect the provisions of this Act, shall be defrayed out of the moneys to be allotted for the relief of the poor in the several parishes and townships within the same city or borough."

*Phipson* in support of the demurrer; *Bovill*, contra.

*Cur. ad. vult.*

The Court said, that the town clerk was not entitled to make any charge for his own time and trouble, or for clerks, in the performance of the duties under the Act, and that the "expenses" referred to in the 55th section meant actual disbursements, and not recompense. But if he was unable to carry the Act into effect, although using all reasonable exertions, and was obliged to call in the assistance of others, he was entitled to charge for the expenses thereby incurred.

*Morris v. Coates.* June 12, 1855.

**COMMON LAW PROCEDURE ACT, 1852.—SUGGESTION OF MARRIAGE OF DEFENDANT AFTER JUDGMENT SIGNED.**

*An application to enter a suggestion under the 15 & 16 Vict. c. 76, s. 141, of the marriage of a female defendant, was refused, where judgment had been signed.*

THIS was an application under the 15 & 16

Vict. c. 76, s. 141,<sup>1</sup> for leave to enter a suggestion of the marriage of the defendant, against whom judgment had been signed on a warrant of attorney, in order to have it executed against her husband.

*Mitward* in support.

The Court said, that the application must be refused.

### Court of Common Pleas.

*Sweet and others v. Benning.* June 5, 6, 8, 1855.

**COPYRIGHT.—HEAD-NOTES OF REPORTS OF CASES.—INFRINGEMENT BY PUBLICATION IN MONTHLY DIGEST.**

Held, *per totam Curiam*, that there is copyright in the head-notes to the report of decisions in the Courts.

Held (*per Jervis, L.C.J., and Cresswell and Crowder, J.J., dissentiente Maule, J.*), that the publication of such head-notes in a *Monthly Law Digest* in alphabetical order is an infringement of copyright.

THIS was a special case arising out of an action which was brought by the proprietors of the *Jurist* against the proprietor of the *Monthly Law Digest* to recover damages for a breach of copyright by publishing the head-notes of decisions reported in the *Jurist* in an alphabetical order.

*Byles, S. L., Lush, and Finslow* for the plaintiffs; *Butt and Peter Burke* for the defendant.

The Court said, that the plaintiffs had a copyright in the head notes, but on the question whether their publication in alphabetical order constituted a piracy, there was a difference of opinion.<sup>2</sup> The head note of a case constituted a condensed report, and if that might be taken, so might the remainder of the report. The publication, therefore, every month of such head-notes took a substantial portion of the *Jurist* and was a piracy, and the plaintiffs were accordingly entitled to judgment.

*Jones v. Orchard.* June 9, 11, 1855.

**ACTION TO RECOVER COSTS PAID TO PROSECUTOR BY BAIL.**

*The plaintiff became bail for the defendant on an indictment for conspiracy, and on non-surrender the defendant was convicted and the plaintiff paid the prosecutor's*

<sup>1</sup> Which enacts, that "the marriage of a woman plaintiff or defendant shall not cause the action to abate, but the action may notwithstanding be proceeded with to judgment; and such judgment may be executed against the wife alone, or by suggestion or writ of revivor pursuant to this act, judgment may be obtained against the husband and wife, and execution issue thereon."

<sup>2</sup> *Per Jervis, L.C.J., and Cresswell and Crowder, J.J.; dissentiente Maule, J.*

*costs under the 5 & 6 Wm. & Mary, c. 11.* Held, that although the plaintiff could not recover as on an indemnity in respect of being bail, he could recover for the costs so paid.

THIS was a rule nisi to reduce the verdict for the plaintiff in this action, which was brought to recover the amount paid by the plaintiff as bail for the defendant upon his not surrendering to take his trial on an indictment for conspiracy, for the costs of the prosecutor under the 5 & 6 Wm. & Mary, c. 11, and on the trial the plaintiff obtained a verdict.

*Finslow* showed cause against the rule, which was supported by *Francis*.

The Court said, that although it might be illegal to indemnify against not surrendering in a criminal case, and that it would be against public policy to imply a contract of indemnity between an offender and his surety, as there would then be in effect only the security of one person for the appearance of the party to take his trial, yet there seemed to be nothing illegal in an express promise to indemnify against the costs, and such a contract would be implied. The rule would accordingly be discharged.

### Court of Exchequer.

*Macdonald v. Hollister.* June 11, 1855.

**COMMON LAW PROCEDURE ACT, 1854.—ATTACHMENT OF LEGACY IN HANDS OF EXECUTOR.**

Held, that the 17 & 18 Vict. c. 125, s. 61, does not authorise the attachment of a legacy in the hands of an executor, who had not made such a statement of account as would entitle an action to be maintained.

THIS was a motion under the 17 & 18 Vict. c. 125, s. 61, to attach a legacy in the hands of an executor, who had expressed his readiness to hand it over to the plaintiff.

By that section it is enacted, that "it shall be lawful for a Judge, upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his attorney, stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor, shall be attached to answer the judgment debt."

*Prentice* in support.

The Court said, that there was no power under the Statute to attach anything but a legal debt, and that as the executor had done nothing which amounted to such a statement of an account as would entitle an action to be maintained, it did not fall within the Act, and the rule must be refused.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

~~~~~  
—'Still attorneyed at your service.'—Shakespeare  
~~~~~

SATURDAY, JUNE 30, 1855.

### REMUNERATION OF SOLICITORS.

#### CONVEYANCING BUSINESS.

WE have received several communications on the mode of remunerating the Profession, applicable both to proceedings in Equity and the practice of Conveyancing. We shall on this occasion select the observations and suggestions which relate to *Conveyancing* transactions, and invite our readers to consider this important branch of a solicitor's practice, and to communicate their views thereon. We are aware that there are differences of opinion with regard to the proposed *per centage* charge advocated in the following suggestions.

It will be recollected that this class of business was not subject to taxation until the Statute of 1843. Solicitors, like any other members of the community, submitted their demands, if resisted, to the ordinary decision of a jury. No doubt when this Act was passed it was fully intended that the taxing Masters should be considered in the light of a jury, and be required on all occasions fairly to estimate the charges of solicitors, not by reference to one fixed standard but according to the relative difficulty, urgency, and importance of the business, and the mode in which it had been transacted. It may be stated that the Profession of a solicitor is now alone subjected to an "assize" of remuneration, and bound to furnish a given commodity at a fixed price. Be a deed ever so important or ever so trifling, the rate of remuneration for framing such instrument is the same, and it seems contrary to all justice, that experience and ability should be compulsorily paid upon the same scale as inexperience and incompetency, and that the remunera-

tion should have no reference to the magnitude and importance of the interests involved in the business transacted.

Another objection to the present system of allowance is, that the Taxing Master assumes to fix the mode in which all business shall be conducted, and having the result before him, often unconsciously forms an opinion from such result, rather than from a consideration of the doubt, uncertainty, and difficulty which has attended the various steps by which such result is attained.

The position of a solicitor is one of great peculiarity; the Courts exercise over him a most stringent and prompt jurisdiction. All his acts are scrutinized with the utmost jealousy, and if it be said that his influence over his client is great, it may be fairly replied so is that of persons in various other positions in life, especially the medical practitioner. With the present means of knowledge and the facilities of obtaining information and assistance, this influence is very greatly exaggerated and extends but little further than the general indisposition of mankind to take more trouble than they can avoid in the management of their affairs.

If a solicitor makes any bargain with his client, with reference to the remuneration he is to receive for business to be transacted, relating to the recovery of property the title to which may be of a doubtful nature, the arrangement is viewed with so much suspicion that no prudent man can entertain the proposition of being remunerated according to the successful result of the litigation. A solicitor has not, like other members of the community, the protection of a jury for the vindication of his character, nor can he have the value of his services on

a *quantum meruit* tested by their opinion founded upon evidence in each particular case.

Under all these considerations, the mode of remuneration is confessedly unsatisfactory alike to the Public and the Profession. The principle upon which it is founded seems now to be considered unsound, and it is generally thought that the Public, if left to make its own bargains in the ordinary transactions of life, will generally protect itself better than can be effected by the interference and control of the law in regulating its contracts.

Nothing can be so distasteful to a man of education, who is sensible that he has acted to the best of his ability in matters fraught with the utmost importance to the honour and welfare of families, as to be compelled to appear before a Taxing Master and substantiate every item in his bill, and to have such observations made as, "Can you say that the attendance upon your client lasted more than an hour? because if not, when the matter is pressed, I cannot allow you more than 6s. 8d. for your time."

It is urged by many solicitors that any increase or decrease of particular items of charge would not remedy the evils of which the Public and the Profession alike complain, and place the relations of solicitor and client upon a more satisfactory footing; and it is therefore suggested that the general mode of remuneration be changed, and in future be regulated by a *per centage* upon the value, as far as practicable, of the subject-matter of business, in lieu of the present charges for attendances, letters and perusals. A *per centage* is the mode by which the greater portion of the community are now remunerated,—for instance, the stock broker, the factor, the consignee, the engineer, the architect, the surveyor, the receiver, the official assignee, the auctioneer, the merchant.<sup>1</sup> This plan, it is contended, would be more satisfactory to the Public than the present practice: men of business would then be able to estimate the expense of a purchase or mortgage, and would not have what they call "bills run up" against them.

Moreover, it is urged that a *per centage* would operate beneficially by making it the

interest as well as the duty of the solicitor to complete as speedily as possible any matter of business in which he might be engaged, and put an end to many of those purely technical and frivolous discussions which sometimes arise and often seriously impede the conclusion of important transactions.

The principle of a *per centage* is already the practice in Scotland in many cases, and in others the solicitors are authorised to charge double and even treble the ordinary fees in matters of importance. It is therefore suggested, that the recent Statute, so far as regards the taxation of bills between a solicitor and his client, be repealed;—that solicitors, like all other members of the community, be at liberty to enter into agreements to transact business on such terms as may be mutually satisfactory to themselves and their clients;—that the principle of remuneration by a *per centage* be fully recognised, and solicitors authorised to act upon it;—that the *quantum meruit* in the shape of *per centage* be determined in case of a difference of opinion, by a jury. The recently acquired power of examining the parties themselves would be a very great protection, and afford a ready means of detecting fraud and dishonesty; and although there may be some difficulty in carrying out the proposed alteration, a little practical experience will speedily adjust it.

Such are the suggestions we have received, but we should prefer that the duty of assessing the charges of solicitors, whether by a *per centage* or otherwise, should continue with duly qualified taxing officers rather than be transferred to a jury, with all the expenses consequent upon a trial before them, especially as they must necessarily be unacquainted with the details of a solicitor's office.

## FEEES IN CHANCERY NOW PAYABLE TO SOLICITORS.

UNDER THE ORDERS OF THE COURT, DISTINGUISHING THOSE WHICH HAVE CEASED OR BEEN ALTERED.

Order of February 26, 1807.

<sup>1</sup> A *per centage* is paid on the lunatic's estate to the officers of the Court, and the charges for taxing costs are levied by a *per centage* without reference to the trouble of the Taxing Officer, and the *per centage* is taken even upon *ad valorem* stamp duties advanced by the solicitor.

1. *Ceased*.—Drawing warrant to prosecute, and filling up same on a 5s. stamp, each . . . . . 0 2 6
2. *Altered*.—Drawing *priœcipe* for subpoena and attending to leave same at Subpœna Office, and afterwards for same . . . . . 0 6 8

* For the præcipe for every sub- pana duces tecum . . . . .	£	s.	d.	petitions, and warrants, where the fixed fees are not applicable.	£	s.	d.
For the præcipe for other sub- panas where the number of names does not exceed nine . . . . .	0	6	8	All just and reasonable expenses properly incurred. <sup>a</sup>			
If nine, and for every subsequent nine names <sup>1</sup> . . . . .	0	6	8	21. For attending defendants on their being served with subpoenas, and taking instructions to appear . . . . .	0	6	8
3. Altered. — Attending taking in- structions for bills, answers, inter- rogatories, and examinations, each	0	13	4	For the fees on appearances in claims and proceedings originating in Chambers. <sup>a</sup>			
Instructions for bills <sup>2</sup> . . . . .	1	14	0	22. Ceased.—For drawing every war- rant to defend . . . . .	0	2	6
4. Attending taking instructions for special affidavits . . . . .	0	6	8	23. Ceased.—For attending at the public office to get messenger sworn upon the return of all commissions	0	6	8
5. Altered.—For drawing bills, an- swers, interrogatories, and affida- vits, per folio of 90 words, including a fair copy . . . . .	0	1	0	24. For attending every witness to be sworn in town before examiner . . . . .	0	6	8
6. Altered.—For ingrossing same on parchment . . . . .	0	0	6	For examination of witnesses viva voce, under 15 & 16 Vict. c. 86, there are no fixed fees applicable, and therefore the just and reason- able charges and expenses are al- lowed according to the circumstances of each case.			
7. Altered.—For ingrossing affida- vits on paper . . . . .	0	0	4	25. Attending with defendant or de- ponent to get answer or special af- fidavit sworn . . . . .	0	6	8
8. Altered.—For fair copies of all pleadings upon record of 90 words, per folio . . . . .	0	0	4	26. For attendance on every Master's warrant or summons . . . . .	0	6	8
9. Altered.—For abbreviating the same, per folio . . . . .	0	0	4	The fees for attendances on Mas- ters' warrants are no longer regu- lated by the number of warrants, but according to the circumstances of each case.			
10. Altered.—For fair copies of all briefs . . . . .	0	3	4	27. For every attendance on the re- gister for directions to the Account- ant-General to sell or transfer stock	0	6	8
Now per folio of 72 words. <sup>3</sup>				28. For drawing request to the Ac- countant-General to lay out cash on each fund . . . . .	0	2	6
11. For attending each counsel with briefs for hearing of a cause, and on special petitions and motions . . . . .	0	6	8	29. Attending on Accountant-Gen- eral to lay out ditto . . . . .	0	6	8
12. For attending counsel with in- structions, and the register to draw up order, and entering on common petitions and motions of course . . . . .	0	6	8	30. For every attendance at the bank to pay in money, and afterwards on Accountant-General to file cashier's receipt . . . . .	0	13	4
13. For attending Lord Chancellor, or the Master of the Roll's secre- tary to present every special peti- tion, and afterwards for same . . . . .	0	6	8	31. For attendances on the register to settle minutes of decrees and de- cretal orders . . . . .	0	13	4
14. For attending the Court every day on which a cause or petition stands in the paper . . . . .	0	10	0	32. For attending the register on set- tling decrees, examining and pass- ing same, and orders on further directions . . . . .	0	13	4
15. Attending when heard . . . . .	0	13	4	33. For attending the register on pass- ing all other special orders . . . . .	0	6	8
16. For attending the Court on every special motion, each day . . . . .	0	13	4	34. For attending to leave decrees and decretal orders to be entered; examining and taking same away . . . . .	0	6	8
17. Ceased.—For service of every order or petition on a clerk in Court . . . . .	0	2	0	35. For attending to file special re- ports at the Report Office, and after- wards for the copy . . . . .	0	6	8
18. Ceased.—For copy and service of every Master's warrant or summons on a clerk in Court . . . . .	0	1	6				
19. Altered.—For personal service of ditto on a party . . . . .	0	10	0				
20. Altered.—For service of ditto on a solicitor where no clerk in Court	0	2	6				
For service and execution of writs, and for service of orders, notices,							

\* The alterations by subsequent Orders are  
printed in italic, and the date of the Order  
given at the foot.

<sup>1</sup> Per Order of December 21, 1833.

<sup>2</sup> August 7, 1852.

<sup>3</sup> June 21, 1854.

<sup>a</sup> May 8, 1845.

<sup>a</sup> See Orders of April 22, 1850, and October  
23, 1852, post.



36. *Ceased.*—For attending to join £ s. d.  
and strike Commissioner's names  
for the examination of witnesses,  
for the solicitor who has not the  
charge of the Commission . . . 0 6 8

*For naming a special Commissioner, an allowance according to circumstances.*

37. *Altered.*—For attending to bespeak every special writ, or special Commission that issues in a cause (except subpoenas) . . . 0 6 8

*For every writ not under order* . . . 0 6 8

*For every writ under order, except injunction* . . . 0 13 4

*For every writ of injunction, including ingrossment and docket, per folio*<sup>6</sup> . . . 0 1 4

38. *Ceased.*—Drawing notice of taking answers or examination, and copy . . . 0 3 6

39. *Ceased.*—Attending two Commissioners to sign the same . . . 0 6 8

40. *Ceased.*—Service thereof not exceeding two miles . . . 0 6 8

41. *Ceased.*—Ditto at a greater distance than two miles, 1s. per mile; but not to exceed 14. 1s.

42. *Ceased.*—For attending to take answers or examinations, each Commissioner . . . 0 13 4

43. *Altered.*—For attending the executions of Commissions, for attending the examination of witnesses, each Commissioner and each solicitor, per day . . . 2 2 0

*Altered as to Commissioner's fees*<sup>7</sup>

44. For each Commissioner's clerk, as ingrossing clerk . . . 0 15 0

45. For attending to read over ingrossment of answers or examination previous to being sworn, if the same does not exceed 20 folios . . . 0 6 8

46. For every additional 50 folios . . . 0 6 8

47. For attending the Master for every certificate to be signed by him, and for filing same . . . 0 6 8

48. *Altered.*—Drawing instructions for all advertisements to be signed by the Master, and afterwards for same . . . 0 6 8

*For preparing advertisements* . . . 0 6 8

*For attending Judge's Chambers therewith, for approval*<sup>8</sup> . . . 0 6 8

49. Attending to get same inserted in Gazette . . . 0 6 8

50. For drawing out caveat against signing and inrolling every decree and order . . . 0 2 6

51. Attending entering caveat, with secretary of decrees, &c. . . 0 6 8

52. For perusing abstracts, every £ s. d.  
three brief sheets . . . 0 6 8

53. For perusing the draft of every deed, for each skin . . . 0 5 0

54. For examining the ingrossment with the draft, for every three skins . . . 0 10 0

55. For making all attested copies, examining and attesting same, per folio . . . 0 6 0

56. Instructions for every special petition . . . 0 6 8

57. Drawing same per folio, and fair copy . . . 0 1 0

58. Ingrossing . . . 0 0 4

59. Copies to serve . . . 0 0 4

60. For drawing special notices of motion . . . 0 2 0

61. Copy and service on every clerk in Court, each . . . 0 2 0

62. For drawing charges and discharges, state of facts, and bills of costs, and fair copy for Master, per folio . . . 0 0 8

63. Term fee (exclusive of clerks in Court's fee) . . . 0 10 0

64. Letters and messengers, per term . . . 0 5 0

#### *Order of April 3, 1828.*

On cause being set down, which has been previously set down in another Court, for certifying same to the registrar . . . 0 6 8

For certifying abatement of suit to the registrar . . . 0 6 8

#### *Order of May 10, 1839.*

For every writ of fieri facias, or venditioni exponas, and for every writ of elegit, for instructions for the said writ . . . 0 6 8

For attending to procure a warrant, and for attending to instruct the officer charged with the execution of such writ . . . 0 6 8

#### *Order of November, 17, 1841.*

For and in respect of the preparation and service of a writ of distringas against the Bank of England, and the præcipe and attendance in respect thereof, such costs as by the rules and practice of this Court are allowed for the preparation and service and attendance in respect of a writ of subpoena to answer a bill.

#### *Order of October 26, 1842.*

By this Order the solicitors are to perform such duties as had theretofore been performed by the sworn clerks and waiting clerks, as attorneys, solicitors, or agents of the parties in relation to the several matters thereafter mentioned, viz. :—

The making out of writs.

The serving and being served with writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications, in causes and matters depending in Court.

<sup>6</sup> October 26, 1852.

<sup>7</sup> May 8, 1845.

<sup>8</sup> October 23, 1852.

The signing of elections and agreements to proceed at law or in equity.  
 The signing of petitions of re-hearing and appeal.  
 The entering of appearances and consents with the registrar.  
 The signing of consents to petitions.  
 The tender and acceptance of costs.  
 The joining in commission and striking of commissioners' names.  
 The signing of notices by paupers.  
 And all other duties theretofore performed by the sworn clerks and waiting clerks, as attorneys, solicitors, or agents of the parties in suits or matters in equity.

By the Schedule to this Order, the fees for writs are as follows:—

	£	s.	d.
For preparing every writ without order	0	6	8
Ditto, every writ under order, except special injunction	0	18	4
Ditto, special injunction, including ingrossment and docket, per folio	0	1	4
Parchment as paid	0	0	0
For the other duties mentioned in this Order the same fees are allowed as were formerly paid to the sworn clerks and waiting clerks, except in cases where other fees have been given to the solicitor by other orders.			

#### Order of April 22, 1850.

##### FEES ON CLAIMS.

1. For instructions to sue or defend	0	6	8
2. For instructions for every claim	0	13	4
3. For preparing and filing a claim	2	2	0
4. Ceased.—For preparing a writ of summons	0	13	4
5. Ceased.—For each writ after the first	0	6	8
6. Ceased.—For engrossing claims and writs, per folio	0	0	6
These fees from Nos. 4 to 8 inclusive, have ceased in consequence of the claims being now printed.			
7. Ceased.—For parchment: as paid for the fees on printed claims see Nos. 2, 3, 4, 5, and 7, of 7th Aug. 1852, <i>infra</i> .			
8. Ceased.—For each copy of writ to serve, per folio	0	0	4
9. For the brief to counsel to move for leave to file claim (exclusive of a copy of the claim for counsel and the Court)	0	10	0
10. For the brief and instructions to counsel, on the hearing (exclusive of any necessary copies)	1	0	0
11. For taking instructions to appear and for entering appearance			
For one or more defendants, if not exceeding three	0	13	4
If exceeding three, and not more than six, an additional sum of	0	6	8
If exceeding six, for every number			

not exceeding three, an additional sum of	£	s.	d.
	0	6	8
12. For settling minutes, passing and entering order on hearing: the same charges as on a decretal order			
13. For entering a caveat	0	6	8
14. For procuring certificate of no caveat	0	6	8
15. For term fee: as in a suit			
And also all such fees as by the present practice of the Court they are entitled to, save such as are varied or rendered unnecessary by the same order.			

#### Order of August 7, 1852.

IV. In lieu of the fees payable to solicitors for instructions for bills, for engrossing bills and claims, for copies of bills and claims, for abbreviating bills and making a brief thereof, the fees specified in Schedule (A.) viz.:

	£	s.	d.
1. For instructions for bill	1	14	0
2. For making a copy of bill or claim for the printer, per folio	0	0	4
3. For correcting the proof sheet, per folio	0	0	2
4. For printer's bill (as paid), deducting any copies paid for by the defendant			
5. For amending each copy of a bill or claim to serve where there is no reprint	0	13	4
6. Instructions for brief to be allowed on a replication being filed, or on a motion for a decree on a bill, or in an injunction cause on moving for the injunction; but so that this fee shall be charged once only in the progress of a cause	1	1	0
7. For amending each brief of a bill or claim where there is no reprint	0	13	4
8. For perusing and considering the bill on behalf of each defendant, or set of defendants, appearing by the same solicitor	1	1	0

#### Order of October 23, 1852.

##### FEES ON PROCEEDINGS IN CHAMBERS.

1. For instructions to commence proceedings originating in chambers, or to defend the same	0	13	4
2. For preparing an original summons for the purpose of proceedings originating in chambers, and the duplicate thereof	0	13	4
3. For attending at chambers to get such summons and duplicate examined and sealed	0	6	8
4. For attending at the Record and Writ Office to file duplicate and examine copies, and get same stamped	0	6	8
5. For endorsing a summons and the copies under Order VI. of 16th October, 1852, and attending to get same sealed	0	6	8
6. For entering the appearance for			

- one or more defendants, if not exceeding three . . . £ s. d. 0 6 8
7. If exceeding three, for every additional number not exceeding three an additional sum of . . . 0 6 8
8. In cases of proceedings originating in chambers the same term fee as in a suit.
9. For preparing every other summons, and attending to get same filled up and sealed at chambers . . . 0 6 8
10. For each copy of a summons to serve or leave at chambers . . . 0 2 0
11. For attending on a summons or other appointment, each day, a fee of 6s. 8d., 13s. 4d., or 1l. 1s., according to circumstances; but the fee is to be 6s. 8d., unless a larger fee is allowed by the Judge or his chief clerk. Where from the length of the attendance, or from the difficulty of the case, the Judge shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case to lay it before the Judge shall have required skill and labour for which no fee has been allowed, the Judge may allow such further fee, not exceeding one guinea, as in his discretion he may think fit . . . 1 1 0

*Power to increase to 10 guineas.\**

12. For preparing every advertisement . . . 0 6 8
13. For attending to get same approved and signed . . . 0 6 8
14. For attending for every order drawn up by the chief clerk, and at the Registrar's office to get same entered . . . 0 6 8
15. For attending to enter claim under Order XXXVI. of 16th Oct., 1852, and to file affidavit . . . 0 6 8
16. For perusing the affidavits of claimants coming in under Order XXXVI. of 16th October, 1852, and attending in chambers at the time appointed by the advertisement, where the number of claims do not exceed five . . . 1 1 0
17. Where the number exceeds five, for every additional number, not exceeding five, an additional sum of 1 1 0
18. For attending to bespeak and procure office copy of certificate or report . . . 0 6 8
- For all other business performed, such fees as by the practice of the Court they are entitled to for similar business.

*Order of October 25, 1852.*

For copies of pleadings and other proceedings in the Court of Chancery, and of the documents relating

thereto, formerly made and delivered by the officers of the Court at the office in which they were filed or left, and which are now made by the solicitors, at the rate of, per folio . . . 0 0 4

*Order of June 21, 1854.*

From and after the 2nd day of July, 1854, all office copies and other copies of pleadings, proceedings, and documents in the Court of Chancery shall be counted and charged for after the rate of 72 words per folio, and where such copies or any portion thereof shall comprise columns containing figures, each figure shall be counted and charged for as one word.

## EMBEZZLEMENT BY BANKERS.

THE 7 & 8 Geo. 4, c. 29, s. 49, enacts, that if any money, or security for the payment of money, shall be entrusted to any banker, merchant, broker, attorney, or other agent, with any direction in writing to apply such money, or any part thereof, or the proceeds, or any part of the proceeds of such security for any purpose specified in such direction, and he shall in violation of good faith, and contrary to the purpose so specified in anywise convert to his own use or benefit such money, security or proceeds, or any part thereof respectively, every such offender shall be guilty of a misdemeanor.

And if any chattel, or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this kingdom or of Great Britain, or of Ireland or of any foreign state; or in any fund of any body corporate, company, or society, shall be entrusted to any banker, &c., for safe custody or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, and he shall in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney shall have been entrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit such chattel or security, or proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, every such offender shall be guilty of a misdemeanor.

The 50th section provides that the above enactment shall not affect trustees or mortgagees, nor prevent bankers from receiving money due on securities, or disposing of securities, &c., on which they have a lien.

Then the 52nd section provides that the

\* 2nd February, 1855.

above enactment shall not affect the remedy which the party aggrieved may have at Law or in Equity; and that bankers and others above-mentioned shall be *protected from indictment*, for any act contrary to this Statute, if they have *disclosed* such act on oath in consequence of any compulsory process of any Court of Law or Equity at the suit of the party aggrieved, or if they shall have *disclosed the same in an examination before the Commissioners of Bankruptcy*.

It appears, therefore, that the disclosures made by Messrs. Strahan, Paul, and Bates, in their examination before the Commissioner of Bankruptcy on Monday last will exempt them from the punishment inflicted in regard to the offence alleged against them, for which they would have been liable to transportation for any term not more than 14 nor less than seven years; or fine, or imprisonment, or both; such imprisonment to be with or without hard labour, and with or without solitary confinement. 7 & 8 Geo. 4, c. 29, ss. 4, 49.

## PARLIAMENTARY RETURNS.

### REAL PROPERTY, COMMON LAW, AND CHANCERY COMMISSIONS.

THE following are the Returns to an Address of the House of Commons, dated March 29, 1855, "of the number of Royal and other Commissions which have been appointed during the reigns of George the Fourth, William the Fourth, and her Majesty, to Inquire into or Report on the Law of Real Property; the Registration of Deeds and Simplification of Forms of Conveyance; the Process, Practice, and Pleading of the Superior Courts of Common Law; and the Process, Practice, and Pleading of the Court of Chancery:"

"Of the Names of the Paid Commissioners appointed on each of the said Commissions; distinguishing the Names of those Commissioners who concurred in or dissented from the several Reports made to her Majesty or her predecessors, by or on behalf of every such Commission:"

"Of the entire expense of the Commissions; distinguishing how much was incurred for each Commission, and the Total Sum received for Salary, Fees, or other emolument by each and every Commissioner, by Name, distinguishing the length of time each Commissioner has served:"

"And of the Number and Nature of the Bills prepared or approved of by such Commissions, and afterwards laid before Parliament, and of the Names and respective Remuneration of the Draughtsmen of such Bills; distinguishing all such of the said Bills as have passed into Laws from such as have not been so passed by Parliament."

The following are the Dates, Title of Commissions, and Names of Commissioners.

### Real Property.

November 24, 1829:

For inquiring into the Law of England respecting Real Property, &c., with a revocation of the Commission dated 14th September, 1829. John Campbell, William Henry Tinney, Francis William Sanders, Lewis Duval, John Hodgson, Samuel Duckworth, Peter Bellingier Brodie, and John Tyrrell.

June 6, 1828:

For inquiring into the Law of England respecting Real Property, and the Methods and Forms in alienating, conveying, and transferring the same.

John Campbell, William Henry Tinney, John Hodgson, Samuel Duckworth, and Peter Bellingier Brodie.

September 14, 1829:

Ditto, ditto, with a revocation of the Commission dated 6th June, 1828.

John Campbell, William Henry Tinney, Francis William Sanders, Lewis Duval, John Hodgson, Samuel Duckworth, Peter Bellingier Brodie, and John Tyrrell.

### Registration of Deeds.

February 18, 1847:

To consider as to the Burdens on Land being diminished by an effective system for the Registration of Deeds, and the simplification of the Forms of Conveyance.

Henry Lord Langdale, Miles Thomas Lord Beaumont, Joseph Humphry, Henry Bellen den Ker, Walter Coulson, George Frere, and Francis Broderip.

January 18, 1854:

For inquiring into the Registration of Title, with reference to the Sale and Transfer of Land.

Spencer Horatio Walpole, John Napier, Sir Alexander James Edward Cockburn, Sir Richard Bethell, Thomas Emerson Headlam, Vincent Scully, Robert Lowe, William David Lewis, Henry Drummond, John Evelyn Denison, Robert Wilson, William Strickland Cookson.

### Common Law.

May 16, 1828:

For inquiring into the course of Proceedings in actions and other Civil Remedies established or used in the Superior Courts of Common Law.

John Bernard Bosanquet, John Stephen, Edward Hall Alderson, James Parke, and John Patteson.

December 10, 1829:

For inquiring into the Course of Proceedings in Actions, and other Civil Remedies established or used in the Superior Courts of Common Law, with a revocation of the Commission dated 16th May, 1828.

Sir James Parke, Sir John Bernard Bosanquet, Sir Edward Hall Alderson, Sir John Patteson, and Henry John Stephen.

March 10, 1831:

For inquiring into the Course of Proceedings in Actions and other Civil Remedies established or used in the Superior Courts of Common Law, with a revocation of the above Commission, dated 10th December, 1829.

Sir John Bernard Bosanquet, Sir James Parke, Sir Edward Hall Alderson, Sir John Patteson, Jonathan Frederick Pollock, Henry John Stephen, Thomas Starkie, Joshua Evans, and William Wightman.

May 13, 1850:

For inquiring into the Process, Practice, and System of Pleading in the Superior Courts of Law.

Sir John Jervis, Samuel Martin, William Henry Walton, George William Bramwell, James Shaw Willes.

August 8, 1850:

For appointing an additional Commissioner.  
Alexander James Edward Cockburn.

#### Chancery.

April 26, 1824:

For inquiring whether any, and what Alterations can be made in the Practice established in the Court of Chancery, or in the Offices in that Court, either as a Court of Law or Equity.

Earl of Eldon and the Lord Chancellor or Lord Keeper, &c., for the time being, John Lord Redesdale, Lord Gifford and the Master of the Rolls for the time being, Sir John Leach and the Vice-Chancellor of England for the time being, Sir Charles Wetherell, Samuel Compton Cox, Anthony Hart, Stephen Lushington, William Courtenay, Robert Percy Smith, Joseph Littledale, John Herman Merivale, Nicholas Conyngham Tindal, and John Beames.

December 11, 1850:

For inquiring into the Process, Practice, and System of Pleading in the Court of Chancery.

Sir John Romilly, George James Turner, Richard Bethell, James Parker, William Page Wood, Charles Crompton.

January 31, 1851:

For extending the inquiry into the other Departments of Justice administered under the authority of the Chancellor.

William Milburne James.

July 4, 1851:

For appointing additional Commissioners.  
Sir James Graham, Joseph Warner Henley.

#### Ecclesiastical Courts.

November 20, 1852:

For extending the inquiry into the Law and Jurisdiction of the Ecclesiastical and other Testamentary Courts, and appointing additional Commissioners.

Sir Richard Torin Kindersley, Sir John Dobson, Stephen Lushington, Sir John Dorney Harding, John Rolit.

#### County Palatine.

February 18, 1829:

For inquiring into the course of proceeding

in suits, &c., in the Courts of Chancery and Common Pleas, in the County Palatine of Lancaster, and in the County Court of the Sheriff of the same county.

Sir James Scarlett, the Hon. Robert Henley Eden, and Thomas Starkie, Esq.

Names of the Paid Commissioners, and the entire Expense of the Commissions, showing how much was received by each Commissioner, &c.

#### Court of Chancery.

April, 1824: £ s. d.

Earl of Eldon, Lord Redesdale, Lord Gifford, Sir John Leach, Sir Charles Wetherell, Samuel Compton Cox, Anthony Hart, Stephen Lushington, William Courtenay, Robert Percy Smith, Joseph Littledale, John Herman Merivale, Nicholas Conyngham Tindal, John Beames . . . Nil.

J. H. Merivale, Commissioner, for preparing Bill for Parliament (founded on the Report) . . . 1,000 0 0

G. Jackson, secretary to the Commission . . . 1,600 0 0

C. K. Murray, assistant secretary ditto . . . 1,600 0 0

Expenses incurred on account of shorthand-writer, lithographer, law stationers, &c. . . 1,812 4 6

Expenses for rent, furniture, fuel, clerks' salaries, &c., and all other incidental charges . . . 1,452 14 8

Total Cost of the Commission £7,464 19 2

The Commission terminated in March, 1826.

#### Superior Courts of Common Law.

May 9, 1828: £ s. d.

\*John Bernard Bosanquet, Commissioner, remuneration for 2 years' service . . . 2,400 0 0

H. J. Stephen, Commissioner, remuneration for near 5 years' service . . . 5,781 18 5

\*E. H. Alderson, Commissioner, remuneration for 2½ years' service . . . 3,000 0 0

\*James Parke, Commissioner, remuneration for 6 months' service . . . 600 0 0

\*John Patteson, Commissioner, remuneration for 2½ years' service . . . 3,000 0 0

Additional Commissioners, March 10, 1831:—

J. F. Pollock, Commissioner, remuneration for 2 years' service . . . 2,400 0 0

T. Starkie, Commissioner, remuneration for 2 years' service . . . 2,400 0 0

J. Evans, Commissioner, remuneration for 2 years' service . . . 2,400 0 0

\* Sir J. B. Bosanquet, Sir E. H. Alderson, Sir James Parke, and Sir John Patteson, declined to receive any remuneration after their elevation to the Bench as Judges.

W. Wightman, Commissioner, remuneration for 2 years' service	£	s.	d.
G. Faulkner, secretary to the Commission, near 5 years .	2,400	0	0
Expenses incurred on account of rent, furniture, short-hand writer, law stationers, clerks, and all other incidental charges	3,853	10	4
	5,321	13	3

Total cost of the Commission	£33,557	2	0
The Commission ceased March, 1833.			

*Real Property.*

June 6, 1828 :—	£	s.	d.
J. Campbell, Commissioner, remuneration for 3½ years' and 16 days	4,556	0	0
W. H. Tinney, Commissioner, remuneration for 3½ years' and 16 days	4,556	0	0
J. Hodgson, Commissioner, remuneration for 3½ years' and 16 days	4,556	0	0
S. Duckworth, Commissioner, remuneration for 3½ years' and 16 days	4,556	0	0
P. Bellinger Brodie, Commissioner, remuneration for 3½ years' and 16 days	4,556	0	0
Additional Commissioners, Aug. 1829 :—			
F. W. Sanders, Commissioner, remuneration for 1½ yrs.	2,100	0	0
L. Duval, Commissioner, remuneration for 2 yrs., 7 months, and 10 days	3,128	0	0
John Tyrrell, Commissioner, remuneration for 2 yrs., 7 mths., and 10 days	3,128	0	0
C. J. Swann, secretary, remuneration for 3½ years and 16 days	3,037	0	0
Expenses incurred on account of short-hand writer, law-stationers, clerks, &c., and all other incidental charges	4,152	7	7

Total cost of the Commission	£38,325	7	1
The Commission ceased March, 1832.			

*County Palatine of Lancaster.*

February, 1829 :—	£	s.	d.
Sir James Scarlett, Robert Henley Eden	Nil.		
Thos. Starkie, Commissioner, remuneration for his services	500	0	0

N.B. This was the only expense borne by the public on account of this Commission.

*Registration of Deeds and Simplification of Forms of Conveyance.*

February 18, 1847 :—			
Lord Langdale, Lord Beaumont, Joseph Humphry, H. Belenden Ker, W. Coulson, G. Frere, F. Broderip	Nil.		
G. W. Sanders, secretary to the Commission, remuneration for seven years	1,550	0	0
Expenses incurred on account			

of clerk, messenger, fuel, &c., and all other incidental charges .	£	s.	d.
	1,747	12	3

Total cost of the Commission	£3,297	12	3
The Commission ceased February, 1854.			

*Superior Courts of Law.*

May 13, 1850 :—			
Sir John Jervis, Samuel Martin, W. H. Walton, G. W. Bramwell, J. S. Willes, Alexander James Edward Cockburn	Nil.		
E. Lawes, late secretary, remuneration for one year and a-half	300	0	0
W. T. Holland, secretary, remuneration for preparing Bills for amendment of the Common Law Practice	367	10	0
Expenses incurred on account of short-hand writer, clerk, house-keeper, and all other incidental charges	461	0	3

Total cost of the Commission to the present time	£1,128	10	3
--	--------	----	---

*Court of Chancery.*

Dec. 11, 1850; Jan. 31, 1851; Nov. 20, 1852 :—			
--	--	--	--

*Ecclesiastical and other Testamentary Courts.*

Commissioners appointed Dec. 11, 1850—Sir John Romilly, G. J. Turner, R. Bethell, J. Parker, W. Page Wood, C. Crompton, W. M. James	Nil.		
Appointed July 4, 1851—Sir James R. G. Graham, J. Warner Henley	Nil.		
Appointed Nov. 20, 1852—Sir R. T. Kindersley, Sir John Dodson, Stephen Lushington, Sir J. D. Harding, J. Rolt	Nil.		
C. C. Barber, secretary, his salary for 4 years, at 600 <i>l.</i>	2,400	0	0
Ditto, for drawing two Bills for Parliament, in 1853, for the Reform of the Court of Chancery	318	0	0
Ditto, for drawing Bill, in 1854, for transferring the testamentary jurisdiction to the Court of Chancery	157	10	0
Messrs. Gurney, short-hand writers, amount of their bill	238	1	3
Expenses incurred on account of clerk's salary, postage, &c., and all other incidental charges	432	18	8

Total cost of the Commission to the present time	£3,537	9	11
--	--------	---	----

*Registration of Title.*

January 18, 1854 :—	£	s.	d.
S. H. Walpole, J. Napier, Sir A. J. E. Cockburn, Sir R. Bethell, T. E. Headlam, V. Scully, R. Lowe, W. D. Lewis, H. Drummond, J. E. Denison, R. Wilson, W. S. Cookson	Nil.		

G. W. Sanders, secretary, salary at 300 <i>l</i> . per annum . . .	£	s.	d.
Expenses incurred on account of clerk, messenger, office-keeper, and all other incidental charges .	375	0	0
	359	17	9

Total cost of the Commission to the present time . . . £734 17 9

JAMES WILSON.

*Whitehall, Treasury Chambers,*  
May 23, 1855.

## LAW OF EVIDENCE.

### QUALIFYING WRITTEN CONTRACT DECLARED ON BY ORAL EVIDENCE.

THE plaintiff, in his declaration, stated that a certain agreement or instrument, in writing, was made and signed between him and the defendant: *Held*, that the defendant could not in his plea rely on oral matter introducing a qualification of such contract, or for the purpose of showing it had been made, subject to certain conditions not appearing on the face of the agreement. *Canham v. Barry*, 15 C. B. 597.

### VARYING TERMS OF WRITTEN CONTRACT FOR SALE OF GOODS.

"The rule is, that where a contract, though completely entered into by parol, is afterwards reduced into writing, we must look at that and at that alone, even though part of the terms agreed upon are not inserted in the written contract. It is by the written contract alone—subject of course to be interpreted by the usages of trade, as in *Syers v. Jonas*, 2 Exch. 111—that the parties are bound. And more especially is that so in a case where, as here, the contract is one which, by the Statute of Frauds, is required to be in writing." Per *Maule, J.*, in *Harnor v. Groves*, 15 C. B. 667, 674.

## NOTES ON RECENT STATUTES.

### COMMON LAW PROCEDURE ACT, 1854.

#### SETTING OUT GROUNDS IN RULE FOR NEW TRIAL.

A RULE nisi was obtained for a new trial, or to enter a verdict for the plaintiff or a nonsuit, "on the ground set forth in the affidavits annexed:" *Held*, insufficient, under the 17 & 18 Vict. c. 125, s. 33, and that the grounds on which the rule was obtained must be specifically stated therein; but on showing cause

the Court ordered it to be amended. *Drayson and another v. Andrews*, 10 Exch. 472.

#### DELIVERY OF INTERROGATORIES TO PLAINTIFF BEFORE PLEA.

On a motion for a rule on the plaintiff to show cause why the defendant should not be at liberty to deliver interrogatories under the 17 & 18 Vict. c. 125, s. 51, after the delivery of the declaration, but before plea pleaded.

*Pollock, C. B.*, said, "we are all of opinion that there ought to be no rule. I believe this to be the first time that the construction of this Statute has come under the consideration of this Court. It is a very important Statute, holding out the prospect of a very considerable change in the practice of the Court, and it is an enactment likely to advance the efficiency of their proceedings. I therefore think it right, that we should offer no opinion nor even the semblance of one, on any part of this case, with reference to an enactment on which a doubt may be fairly entertained, until the question is fully and fairly before us in such a shape as to demand our decision. There are portions of the 51st section which may possibly give rise to doubts. But upon those questions, of which some have been raised at the Bar, and of which others have been intimated by the Bench, I give no opinion whatever; for I think our decision upon them should be reserved to a time when it is called for. I think it perfectly clear that the 51st section points to the time of the declaration as the proper period for the delivery of the written interrogatories by the plaintiff, and to the time of the plea as the period when they are to be delivered by the defendant, whether or not, according to the true construction of this section, the Court has power to allow them to be delivered at other times—whether before or after declaration by the plaintiff, or before or after plea by the defendant—is immaterial for the present purpose, because I think that upon these affidavits that sort of case is not made out of extreme urgency, which, according to the principles laid down by the Court of Queen's Bench in *Finney v. Beesley*, 17 Q. B. 86, is necessary. In this respect as in others also, the affidavits are especially defective. Certainly some inconvenience may arise from refusing a party that knowledge which might have the effect of removing the necessity of his pleading at all, by showing him that he has no defence; and if the defendant had said, that upon his being

permitted to put the proposed questions, and upon their being answered in a particular manner he would withdraw his defence to the action, that would have afforded a much stronger reason for granting this rule than any at present suggested by him. But the defendant does not do anything of the sort. He does not even say that he will act upon the answers which he seeks to receive to the interrogatories. It might no doubt be a matter of some convenience to parties if they could before declaration or plea, as the case may be, be permitted to ascertain all the facts of their case; but I think the inconvenience which would follow would be greater if a party were allowed to put such interrogatories at such a time without showing the urgent necessity for their allowance, as otherwise it is highly probable that in many cases the time of the Courts and of the Judges would be needlessly occupied in discussing the propriety of allowing such interrogatories. I am reminded by my brother *Parke*, that another point has been raised, namely, as to the meaning of the term 'discovery' in this section; but that is one which does not call for any decision, and therefore I cautiously abstain from giving any opinion whatever on that point. Assuming, however, the Court to have the power to allow a defendant to deliver interrogatories before plea, and that the discovery here sought for is within the meaning of this clause, we think that the defendant has not disclosed in his affidavits such special circumstances as are sufficient to entitle him to the leave he seeks."

*Martin v. Hemming*, 10 Exch. 478.

## LAW LIFE ASSURANCE SOCIETY.

### REPORT OF THE DIRECTORS.

THE directors have much pleasure in meeting the proprietors and assured for the purpose of communicating the result of the fourth investigation into the affairs of the society, and of declaring the amount of the surplus profits accrued during the septennial period ending on 31st December, 1854.

Up to the 31st December, 1854, 15,407 policies had been issued by the society; of these 7,874 remained in force at that date, and of this number, 7,038 are, under the rules of the society, entitled to participate in the profits to be divided.

A valuation has been made of the society's liability under each policy in force on 31st December last; the several computations having been made on the same basis, as on previous occasions of division.

A careful valuation of the assets of the society has also been made, and the result of such valuations is as follows:—

#### Assurance Fund.

Value of Assets on 31st December, 1854 . . .	£3,878,713	19	5
Value of liabilities on same date . . . . .	3,085,566	10	2

Leaving as the surplus to be divided . . . . .	£793,147	9	4
--	----------	---	---

Of this surplus, under the terms of the deed of settlement, the proprietors are entitled to one-fifth . . .	£158,629	9	10
And the assured to the remaining four-fifths . . .	£634,517	19	6

#### Proprietors' Guarantee Fund.

The amount of this fund on 31st December last was . .	£457,229	6	6
The addition of one-fifth of the present surplus . . . . .	158,629	9	10

Makes the total Guarantee Fund on 31st Dec. 1854 . .	£615,858	16	4
--	----------	----	---

The interest accruing from this sum of £615,858. 16s. 4d. as at present invested, will enable the directors to pay to the proprietors an annual dividend of 2l. 10s. per share, clear of income tax; being an increase of dividend of 14s. per share; the entire dividend being after the rate of 25 per cent. per annum on the amount paid up on each share.

The sum of £634,517l. 19s. 6d., falling to the share of the assured, has been allotted among them in proportion to their respective interests, a reserve being made for those policies which are not yet entitled to participate, by reason of their not being of three full years' standing. The share falling to each policy has, in accordance with the provisions of the deed of settlement, been converted into equivalent reversionary bonuses, payable with the sum originally assured, as claims arise. The reversionary bonuses now to be added amount in the whole to 943,597l.

The directors beg to intimate, that they are prepared to accept surrenders of the reversionary bonuses added to the several policies on former divisions as well as on the present occasion. Upon such surrender, either a cash payment or a reduction in the future annual premiums payable under the policy, will be granted, at the option of the assured.

On 3rd July, 1854, the royal assent was given to an Act, whereby the powers of the directors as to the investment of the funds of the society were extended, and the directors anticipate that by the cautious and prudent use of such extended powers, considerable advantage will accrue to the society, by reason of the more profitable investment of its funds. Power is given to the directors, by the Act, to make advances on the security of the policies of the society, and from the extent to which the as-



sured have already availed themselves of the privilege during the short time the system has as yet been in operation, the directors anticipate that such loans will materially conduce to the convenience of the assured, whilst they afford an eligible mode of investment for a portion of the society's funds.

Up to 31st December last the society had been 31 years and a-half in existence, and during this period has met with great success. Its accumulated funds exceed 4,300,000*l.*—its annual income exceeds 450,000*l.*

Four divisions of profits have been made; the first in respect of 10 years and a-half, and each of the other divisions in respect of a period of seven years. At these four divisions the amount of profit divided has been 2,349,233*l.*, four-fifths of which amount (1,879,386*l.*) have been allotted among the several policies in the form of equivalent reversionary bonuses, amounting to 2,872,682*l.*

A sum exceeding 3,250,000*l.* has been paid in claims upon death, including upwards of 500,000*l.* in respect of bonus.

In concluding their report, the directors cannot but express their hope that the proprietors and assured will be alive to the necessity of using their best efforts to uphold and increase the business of the society; whilst, at the same time, the directors consider that they may well congratulate all parties on the satisfactory state of the society's affairs, and on the high position which it deservedly holds amongst offices for life assurance.

## EQUITABLE ESTATE.—MORTGAGE.

THE following opinion, which we have received from a respected correspondent, appears usefully to state the effect of the several decisions on this subject:—

The principle applicable to cases of this nature is stated in the case of *Jackson v. Parker*, Amb. 689, "That where a mortgage is made, the equity of redemption follows the original right, and the Court will give that effect to the words of the proviso, though they may import the contrary, unless there appears some contract or stipulation that the equity of redemption shall go in a different manner. That there is no such contract or stipulation in this case. That it is not to be presumed to be the intention of the parties to give the equity of redemption to the husband and wife jointly. That the wife parted with nothing but a chance of dower." And in *Jackson v. James*, 1 Bligh, 126, Lord Redesdale observes—"It must now be admitted as an established principle, to be applied in deciding upon the effect of mortgages of this description whether it be the estate of the wife or the estate of the husband, if the wife joins in the conveyance, either because the estate belongs to her, or because she has a charge by way of jointure or dower out of the estate, and there is a mere reservation in the proviso for redemption of the mortgage which would carry the estate from the person

who was owner at the time of executing the mortgage, or where the words admit of any ambiguity, that there is a resulting trust for the benefit of the wife, or for the benefit of the husband, according to the circumstances of the case."

The decision of the House of Lords in that case reversed the judgment of the Lord Chancellor, 16 Ves. 366; but in that case the mortgage was for a term, and the question arose, not on the interpretation of the proviso of redemption, but upon the limitation of the fee which was distinct and separate. That decision therefore does not affect the present case.

In the case of *Reeves v. Hicks*, 2 Sim. & Stu. 403, the same distinction was made; the mortgage as to the freeholds was for a term, and the fee was a distinct limitation to the husband, and it was decided that the limitation of the fee to the husband and his heirs had no connection with the purpose of the mortgage or the proviso of redemption, but was altogether a new settlement which defeated the heir of the wife. But as to the copyholds, where the title of the husband depended entirely on the proviso for redemption, the decision was different. The case of *Anson v. Lee*, 4 Sim. 364, was under special circumstances which do not apply in the present case. In *Rowell v. Walley*, 1 Cha. Rep. 116, there was a distinct declaration in no manner depending upon the proviso for redemption.

Here the deed shows marks of great carelessness; the conveyance by lease and release is made to *A. B.*, his heirs and assigns *habendum*, and to the use of *C. D.* and his assigns for life; and the usual trust to reconvey such of the estates as may not be sold is omitted, although the trust is to sell only a competent part of the premises, and there are expressions which show that it was in contemplation that the heir of *C. D.* might have an interest. The sale is directed to be made without any further consent of the said *C. D.* and his wife or either of them, *his* or *her* heirs or assigns, and the same expression is used in the power to fell timber. There is nothing from which any intention can be inferred of making such an important alteration in the rights of the parties as to change the ownership of the equity of redemption as to the reversion in fee, and the only recital as to the intention expressly limits the object of the deed to the better securing the payment of the sum of 2,000*l.* pursuant to the condition of the recited bond. In such a case it is impossible to doubt the directions to permit the daughter, her heirs and assigns, to enjoy until default, and the direction to pay to the daughter, her heirs or assigns, the surplus of the money, were framed by mistake, or without considering the effect of them.

I am, therefore, of opinion, that the real estates are liable to the payment of the debts of all the judgment creditors of *C. D.*

## RE-REGISTRATION OF JUDGMENTS.

UNDER the 13 & 14 Vict. c. 29, ss. 3, 4, all judgments entered and registered or re-registered before the 15th July, 1850, must, in order to preserve their priority as against purchasers and creditors, be *re-registered within five years from the 15th July, 1850*, and within every subsequent five years from the date of such registry or re-registry. All judgments entered after the 15th July, 1850, will require to be re-registered every five years.

## SELECTIONS FROM CORRESPONDENCE.

## COUNTRY CONVEYANCING.—UNFAIR PRACTICE.

SOME time ago an article appeared in your journal complaining that a *baby* title of five years had been given to some purchasers of plots of land in Wiltshire realising an enormous sum per acre.

I have since learnt that the purchasers were prevailed upon by the vendor's solicitors to allow them to prepare the conveyance, and which they accordingly did.

It ought to be added, that the purchasers were told (whether fairly and in strict accordance with professional usage and etiquette I leave others to judge) that if they went to another solicitor it would cost them three times as much as they would charge. It may be right to say that the purchasers were told by the vendor's solicitors or their clerk, anterior to the purchase, that unless they employed them to prepare the conveyance the land would not be sold to them.

I am not aware that the Incorporated Law Society (which has already effected much good) would feel it incumbent to notice such practice.

AMICUS.

[This practice of solicitors being engaged both for vendor and purchaser has been formally remonstrated against by the Council of

the Incorporated Law Society, and their resolution sent to all the Law Societies.—ED.]

## BARRISTERS CALLED.

Trinity Term, 1855.

LINCOLN'S INN.

June 6.

Francis William Everitt Stiffe, Esq.  
William Torrens McCullagh, Esq., LL.B.  
Robert Spencer Borland, Esq., M.A.  
Henry Scarth, Esq.  
Philip Lutley Sclater, Esq., M.A.  
William Angell, Esq., B.A.  
Charles Fitzwilliam Cadiz, Esq., B.A.  
Frederic William Earle, Esq., B.A.  
John Pym Yeatman, Esq.  
George Udney, Esq.  
Joseph Keech Aston, Esq.  
Charles Ambrose Lionel Lorenz, Esq.

## INNER TEMPLE.

June 6.

Walter Robinson, Esq.  
Thomas Arthur Farrell, Esq.  
Bernard Gustavus Norton, Esq.  
Peter Rothwell Crook, Esq.  
Charles Ierom Murch, Esq., B.A.  
James Scott Ogle, Esq., B.A.  
Benjamin Henry Walpole Way, Esq.  
John Boyd Kinnear, Esq.  
Henry Bret Ince, Esq.  
James Mackonochie, Esq.  
William Reynold Deire Salmon, Esq.  
Gregory Charles Paul, Esq., B.A.  
William Patchett, Esq., B.A.

## MIDDLE TEMPLE.

June 6.

Edward Howley, Esq.  
Henry Gillett Gridley, Esq.  
Henry Rutherford, Esq.  
Robert Mortimer Montgomery, Esq.  
Andrew Steinmetz, Esq.  
Joseph Park, Esq.

## GRAY'S INN.

June 6.

Edward Dundas Holroyd, Esq., M.A.

## ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1855.

Queen's Bench.

[Concluded from page 128.]

## Clerks' Names and Residences.

## To whom Articled, Assigned, &amp;c.

Keir, Campbell Mackintosh, 40, Gloucester-cres.  
Kelly, John Birch, 10, Somers-place, Hyde-park-square; and Inner Temple-lane  
King, Robert, 10, Frederick-place, Mile-end-road  
Ladd, Thomas Henry, 50A, Trinity-square; and Liskeard  
Lee, Frederic Coope, 17, Inverness-rd., Baywater  
Loggett, Francis Charles, 36, Upper Bedford-place, Russell-square  
Leonard, Wilberforce, 10, Harrington-street, North, Hampstead-road; and Clifton

W. Pridaux, Goldsmith's-hall

J. B. Kelly, Inner Temple-lane

L. Hicks, Grays Inn-square

J. Sargent, Liskeard

T. French, Eye

J. E. Buller, Lincoln's Inn-fields

B. Leonard, jun., Bristol

## Clerks' Names and Addresses.

## To whom Articled, Assigned, &amp;c.

Logan, Alexander Crosby, 28, York-place, City-road; and Dalby-terrace	J. S. Robinson, Sunderland
Logan, Crawford Brown, Walton, near Liverpool	G. Webster, Everton, near Liverpool
Loggin, Nicholas Marshall, 45, Stanhope-street, Camden-town; and Exeter	J. Geare, jun., Exeter
Louis, Marcus, Ruthin	J. Peers, Ruthin; R. Edwards, Ruthin
Loveband, William Chorley, Gothic Villa A, Lower-road, Islington; and Bishop Nympton	J. Pearse, Southmolton
Lysaght, Percy Pulleine, Twickenham	W. Parke, Lincoln's Inn-fields
Macdonald, John Edwin, 8, North-street, Peterborough; and Fairfield	E. Foster, jun., Cambridge
Mackenzie, William, 56, Richmond-road, Islington; and Mitre-court-buildings	E. J. Jennings, Mitre-court-buildings
Mantell, James, 173, Bishopsgate-street-without; and Bitton, near Bristol	H. Bush, Bristol
Marshall, Frederick, 1, South-square; and Cheltenham	J. Boodle, Cheltenham; C. J. Chesshyre, Cheltenham
Morgan, Edward, 6, Compton-street, East, Stepney; and Machyrrilleth	D. Howell, Machyrrilleth
Morten, John Garrett, 51, Old Broad-street; and New-square	J. Sewell, Old Broad-street
Murray, Abraham Joseph, 15, Porchester-place, Hyde-park	H. Phillips, Sise-lane; W. Phillips, Sise-lane
Norton, George, Edgbaston	J. Stubbs, Birmingham
Onions, John Coldbatch, Brighton	H. Verrall, Brighton
Parr, William, 49, Guildford-street, Bedford-row; and Ormskirk	L. Wright, Ormskirk
Parry, Richard, Carnarvon	R. D. Williams, Carnarvon
Philips, E. Herbert de Rhe, 4, Lloyd-street, Lloyd-square	G. P. de Rhe Philips, Gray's Inn-square
Phillips, George Aldcroft, 2, Inner Temple-lane; and Manchester	A. Phillips, Manchester
Phillips, Henry, 14, Millman-street, Queen's-sq.; Wisbeach; and Stamford	F. Jackson, Wisbeach
Pinchard, J. H. Biddulph, 4, Great Russell-st., Bloomsbury; and Taunton	W. P. Pinchard, Taunton
Pinniger, James Cockburn, 37, Wharton-street; and Newbury	B. Pinniger, Newbury
Price, David Long, 29, Arundel-street, Strand; and Llandovery	C. Bishop, Llandovery; A. Jenkins, New Inn
Randall, Cornelius, jun., 71, Coleshill-street, Pimlico; and Manchester	J. Stevenson, Manchester
Richings, William Harris, 14, Belgrave-street, Argyle-square; and Staines	J. B. May, Queen-square
Rivington, Edward, 12, Upper Woburn-place; Fenchurch-buildings; and Petersfield	W. Mitchell, Petersfield; C. Rivington, Fenchurch-buildings
Robinson, Thomas John, Handsworth	W. S. Sutton, Birmingham
Roper, G. Edward Trevor, 9, Huntley-street, Bedford-square; and Plas-Teg-Mold	W. B. Collis, Stourbridge
Rouse, John William, 15, Lincoln's Inn-fields; and Melton Lodge, Grove, Camberwell	C. B. Dryden, Lincoln's Inn-fields
Rudyard, Fred. Colville, Macclesfield	T. Parrott, Macclesfield
Scadding, Walter, 1 and 2 Gordon-st., St. Pancras	E. W. Scadding, Gordon-street
Schula, John Thomas, 22, Camden-street North, Camden-town; Kennington; and Torquay	J. H. Bolton, New square
Sheild, Henry, 12, Lincoln's Inn-fields; Preston; and Taunton	H. C. Trenchard, Taunton
Simey, Ralph, 55, Acton-street, Gray's Inn-road; and Sunderland	R. Brown, Sunderland
Smith, George, Moorland-road, Burslem	R. Heaton, Burslem
Smith, George Henry, 24, Coney-street, York	R. H. Anderson, York
Simmons, Henry Argent, Lansdown-road, South Lambeth; and King's-bench-walk	W. Simmons, and J. Randall, King's-bench-walk
Slaney, John William, 7, Southgate-terrace, Old Kent-road	R. Cattarns, Mark-lane
Sobey, William Thomas, 68, Aldermanbury	W. J. Little, Devonport
Sowerby, James Coates, 33, Kenton-street, Brunswick-square; and Stokesley	J. P. Sowerby, Stokesley
Spencer, John Charles, Kirkby Lonsdale	H. A. Gregg, Kirkby Lonsdale
Stibbard, George Davy, 16, Albert-square, Clapham-road; and Stockwell	G. Tamplin, Fenchurch-street
Stokoe, Thomas Robert, Hexham	J. Stokoe, Hexham
Sturton, John Phipps, 17, Connaught-terrace, Hyde-park; and Holbeach	T. Sturton, Holbeach

## Clerks' Names and Residences.

## To whom Articled, Assigned, &amp;c.

Taylor, William, Hexham . . . . .	J. Taylor, Hexham
Todd, William, Hartlepool . . . . .	P. Barker, Hartlepool; E. Hodgson, Hartlepool
Tomkins, John Charles, 54, Bernard-street, Russell-square; and Lewes . . . . .	J. Lewis, Lewes; J. Sowton, Great James-street
Tosswill, Charles Speare, 8, Carlton-hill, East, St. John's-wood . . . . .	J. T. Church, Bedford-row
Vicary, John Fulford, 4, Holford-place, Pentonville, Islington; and Bedford-row . . . . .	D'Arcy & Beachey, Newton Bushell; H. F. Church, Bedford-row
Wakeman, Herbert John, 43, Westbourne Grove, Bayswater; Thame; and Manchester . . . . .	R. Holloway, Thame; J. S. Torr, Bedford-row
Walford, John, Birmingham . . . . .	T. Standbridge, Birmingham
Walker, Baues, 1, Featherstone-buildings; and Boston . . . . .	J. G. Calthorp, Boston
Walker, Leasowe, Searcroft . . . . .	R. F. Payne, Leeds
Wallis, W. Peter Voaper, Southsea . . . . .	C. H. Binstead, Portsmouth
Watson, George Metcalfe, 19, Tavistock-place, East-street, Mornington-road; and Stockton-on-Tees . . . . .	W. C. Newby, Stockton-on-Tees
Wheeler, Frederick George, 67, Stanhope-street, Hampstead-road; and Stroud . . . . .	L. Winterbotham, Stroud
White, Henry Brown, 6, Raymond-buildings, Gray's-inn; Pewsey; and Presbute . . . . .	S. B. Dixon, Pewsey
Whiting, T. Brown, jun., Soham . . . . .	T. Button, Newmarket
Whyley, Mark, 1, Frederick-street, Grays-inn-road; and Cambridge . . . . .	C. Francis, Cambridge
Woodhouse, Edw. Gardine, 4, Lansdowne-terrace, Kensington-part; and New-square . . . . .	H. W. Woodhouse, New-square
Wyon, Fred. William, 16, Westbourne-terrace, North, Westbourne-grove; and South-square, Gray's-inn . . . . .	W. Ford, South-square

## Added to the List pursuant to Judge's Orders.

Bilton, Thomas William, Ivy-cottage, Brixton-hill	T. Bilton, Brixton; R. Jackson, Bedford-row
Borall, Charles, 30, Anwell-street, Claremont-sq.	H. Chase, jun., Reading
Brice, William, 22, Craven-street, Strand; and Bruton, Somerset . . . . .	E. Dyne, Bruton; H. Dyne, Bruton
Bristow, William, Hamdale-place, Greenwich	A. R. Bristow, Greenwich
Cropper, William, 6, Frederick-street, Gray's-inn-road; and Liverpool . . . . .	J. Atkinson, Liverpool
Eyre, Charles James, 57, Lincoln's-inn-fields	Prichard and Collette, 57, Lincoln's-inn-fields
Gellatly, Peter, jun., 1, Albion-terrace, Limehouse	P. Gellatly, Albion-terrace
Gough, Charles Selwyn, Banbury . . . . .	O. Cheek, Eversham; R. H. Rolls, Banbury
Hyett, John Charles, 12, Mitford-road, Hornsey-road . . . . .	A. Henderson, Bristol; W. Williams, Hanley; J. B. Smith, Shelton; C. E. Pownall, Kensington
Jennings, Thomas Amas, 25, Gloucester-gardens, Paddington; and Stockton . . . . .	J. R. Wilson, Stockton
Morris, John Lindsey, 9, Devonshire-st., Queens-square, Pentonville; and Halifax . . . . .	F. B. Philbrick, Colchester; H. J. Philbrick, Halifax
Probert, Thomas, Hay . . . . .	W. Pugh, Hay
Talbot, Aug. Blaquiére, 47, Bedford-row . . . . .	F. Talbot, 47, Bedford-row
Williams, Thomas, Holyhead . . . . .	O. Owens, Holyhead
Williamson, Edward Walter, 39, Hunter-street, Brunswick-square . . . . .	J. Williamson, sen., Great James-street

## PROFESSIONAL LISTS.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 22nd May, to 22nd June, 1855, both inclusive, with dates when gazetted.

Hoyle, William Fretwell, and Robert March, jun., Rotherham, Attorneys, Solicitors, and Conveyancers. June 15.

Palmer, Edward Fielding, Charles Palmer, and Thomas Knowles, Coleshill. Attorneys and Solicitors. June 22.

Vizard, William, and Thomas Edgcombe Parson, 61, Lincoln's Inn Fields, Attorneys and Solicitors. June 1.

## PERPETUAL COMMISSIONER.

Appointed under the Fines and Recoveries' Act, with date when gazetted.

Collins, Thomas, Bury St. Edmunds, in and for the county of Suffolk. June 15.

## NOTES OF THE WEEK.

## LAW APPOINTMENT.

The Durham University, at a Convocation held there on the 19th instant, conferred by diploma the honorary degree of M.A. on *Ralph Lindsay, F.S.A.*, a member of the Profession, and the founder in 1845 of the Lindsay Scholarship of 40l. a year in that university,

for the benefit of the scholars on the foundation of the Durham Cathedral Grammar School, where he was educated.

#### NEW MEMBER OF PARLIAMENT.

*William Tite, Esq.*, for Bath, in the room of *Thomas Phinn, Esq.*, who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

#### EXECUTOR AND TRUSTEE BILL.

The 2nd reading of this Bill has been postponed. We understand it will be strongly opposed. A similar Bill was thrown out last Session, after full consideration in a Select Committee. If entertained at all, it should be in the form of a public Bill, applicable generally to the payment of all trustees, whether joint-stock companies or individuals.

### REMAINING BUSINESS OF THE PRESENT SESSION OF PARLIAMENT.

On Monday last, the 25th instant, Lord *Palmerston* said—It may be now the most convenient opportunity to state, so far as I am able, the intentions of her Majesty's Government in regard to the various Bills which are now before the House. The number of them is certainly very considerable; but those who have looked at them with a view to classification will see that those children whose fate is to be disposed of are, in a great proportion, the offspring of private members; and those in regard to which the Government can claim responsibility are, comparatively, a small proportion of the whole. It is, therefore, with these only that the Government can deal. Of course, we do not promise to take it upon ourselves to dispose of Bills that have been brought in by private members; and it will be for them to judge, as they are responsible, how far they think they have a fair chance of carrying them through, and at what period they may think it most convenient to proceed with them.

There are of Government measures 33 in different stages of progress, independently of continuance Bills, and of Bills sent down from the House of Lords. I should only be occupying time unnecessarily by reading through the list of them. Some of them are measures which are of comparatively small interest, or which would not give rise to much discussion. There are others of considerable importance, which the Government conceive it is essential

to pass, whatever discussions may take place upon them.

Among these I should mention the Bills upon the subject of *Limited Liability* and *Partnership*: the Bills of my right honourable friend the President of the Board of Health upon the *Government of the Metropolis*, and upon the provision to be made for the *Removal of Nuisances* and the preservation of the *Public Health*; and of course the Bill which provides for the Transfer of the Property in Ordinance Lands from that Board, which has now ceased to exist, to be vested in the Secretary of State for the War Department. These measures of course are essential, and we must endeavour to pass them.

It will be best perhaps that I should state those which we think it will not be desirable to press on the attention of the House this Session; and the first will be the Jurors and Juries Bill for Ireland, which now stands for the second reading. The Secretary for Ireland thinks that Bill might stand over for another Session. On the same principle, the Bill for Grand Jury Sessions in Ireland, which stands for the second reading, will not be pressed. With regard to the *Education Bill*, it is generally understood that all the Bills connected with that subject which stand for the second reading will, if the House should agree to read them a second time, be referred to a Select Committee, not with the view of passing this Session, but to have the opinion of a Committee in regard to their general and aggregate object. Therefore, that Bill, together with the Bill of the right hon. baronet opposite, and of my right hon. friend the member for Manchester, it would of course be proper to press on to the second reading, to be referred to the Select Committee.

Next comes the *Testamentary Jurisdiction Bill*. Now, it was clearly understood, and the Chancellor stated so in the other House, that that Bill should be coupled with a Bill for *Church Discipline*. Various circumstances have hitherto prevented the Government from presenting to Parliament a sufficient and satisfactory Bill on this subject; and at this advanced period of the Session I think it is hopeless to suppose those Bills could elicit sufficient discussion to justify the House in passing them. We, therefore, do not mean to press the Testamentary Jurisdiction Bill.

There is, then, the Court of Sessions Bill for Scotland, which, although it has reached a very advanced stage in this House, gives rise,

we know, to a very considerable difference of opinion; and in deference to that, we intend not to press it in the present Session. So much for the Government Bills in different stages of progress. With regard to the continuance Bills, they are mostly matters of a mere temporary form. There is a Bill for the continuance of the Metropolitan Sewers Commission, which, of course, will drop, because the Bills of my right hon. friend the President of the Board of Health would supersede the present Commission of Sewers, and render, therefore, its continuance unnecessary.

There are seven Bills come from the Lords which I hope the House will seriously consider. It is not our intention to withdraw any of those Bills. Then come 36 Bills of private members. There is one Bill, the Tenants' Compensation (Ireland) Bill, which the Government will support, and it is in a condition from which we hope the house may be disposed to pass it with the amendments and improvements that may be made. That is as far as we can at present state it, the view of the business before the House, and I should hope that there yet remains sufficient time in the Session to pass into law those Bills that I have not mentioned as being withdrawn. I may at the same time say that at this time of the Session, considering the importance of the Government measures still under consideration, it will be utterly impossible for her Majesty's Government to yield to applications that may be made to them to give Government days for the purpose of bringing forward the hon. gentlemen's Bills or motions, and therefore those gentlemen who have Bills before the House must make up their minds as to the course they will pursue.

Mr. Disraeli said, when he made an inquiry the other night of the noble lord, the noble lord said that the House was indebted to private members for the pressure of business. The noble lord had repeated to-night that, although there were a considerable number of Government Bills in the process of passing

through the House, the pressure of business in the House was to be attributed to the Bills of private members. But he could not find, on again recurring to those authorities which were on the table of the House, and which were open to any one, that the noble lord was at all justified in the tone that he assumed the other night, and which he had assumed again to-night. These were the details. He did not stop to inquire how many were continuance Bills, and the House would judge whether the pressure of business was occasioned by private members. They had of Bills not yet read a second time, 28 Government Bills, and 17 brought in by private members; of Bills in Committee, 22 Government Bills, and 12 brought in by private members; of Bills as amended to be considered, there were four private members, and by Government Bills none; of Bills not yet read, there was an equal number by private members, and by Government.

There were, therefore, 53 Government Bills, and only 36 of private members, making in all 89 Bills that the House had to consider. The number of Orders of the Day had increased since he made those observations on Friday; there were then 76, and now there were 86, to which must be added two adjourned debates. The noble lord had referred to the continuance Bills, which would not give by any means a majority to be attributed to private members.

The noble lord would of course proceed with all the other Government Bills, and which were in number, he thought, 22. He understood from the noble lord to-night that he had given up one of the Bills for which the third reading had been fixed. As time was so precious, it was very much to be regretted that her Majesty's ministers should have lost so much time by going on with that Bill, the Court of Sessions (Scotland) Bill. However, he rose merely to vindicate what he had before said, that of the 76 Orders of the day the great majority were Government Bills.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Bullock v. Bennett.* June 12, 1855.

**WILL.—CONSTRUCTION.—EFFECT OF WILLS' ACT SPEAKING FROM DEATH OF TESTATOR.**

*A testator gave part of the residue of his property in trust to invest the same and pay*

*the annual proceeds thereof to his daughter for life or until her marriage, and after her decease or marriage, whichever should first happen, 900*l*, part thereof, to her children by her late husband B., and the remainder to those by her former husband W. The daughter married again after the date of the will, but before the testator's death:*

*Held, reversing the decision of the Vice-Chancellor Wood, that the gift over took effect.*

THE testator, by his will dated in July, 1852, gave the residue of his property in trust to invest 1,200*l.* thereof and to pay the annual proceeds thereof to his daughter for life or until her marriage, and after her decease or marriage, whichever should first happen, 900*l.* thereof to be paid to her children by her late husband William Bennett, and the remaining 300*l.* between her three children by her former husband Thomas Wylie. It appeared that the daughter was a widow at the date of the will, but that she had again married before the death of the testator. The Vice-Chancellor Wood having held, that she was entitled notwithstanding such marriage, this appeal was presented.

*Freeman* for the plaintiffs and executors; *Rolt* and *Faber* in support of the appeal; *W. M. James* and *G. M. Giffard*, contra.

The *Lords Justices* said that the 24th section of the *Wills' Act*, which enacted that a will shall be construed with reference to the real and personal estate comprised in it to speak and take effect as if executed immediately before the testator's death, did not apply to the interests taken in such estate by the objects designated by the will, but applied only to the real and personal estate itself. The decision of the Vice-Chancellor must, therefore, be reversed.

#### Master of the Rolls.

*Littlejohns v. Household.* June 22, 1855.

**WILL.—CONSTRUCTION.—SURVIVORSHIP AT DEATH OF TENANT FOR LIFE.**

*A testator by his will gave (subject to the life interest of his three daughters therein) a freehold house to his three grandchildren, Catherine, Christiana, and William, their heirs and assigns, equally, and he directed that in the event of either of his grandchildren dying in the lifetime of his daughters the share of them so dying should be transferred to the survivors or survivor. All the grandchildren pre-deceased one of the daughters: Held, that the gift over not taking place, the gift among the grandchildren had not been divested.*

THE testator by his will, dated in October, 1822, directed his executors and trustees to permit his three daughters (naming them) to have the use, occupation, and enjoyment of his freehold house, No. 2, High Street, Kensington, free from interest for life respectively, if they chose to reside therein, but if either of them chose she might dispose of her interest therein to the others willing to reside therein; and subject to such life interest he gave the house to his three grandchildren, Catharine Mary Peche, Christiana Littlejohns, and Wm. Littlejohns, their heirs and assigns equally, and he authorised his trustees to convey and

assign the same to them. In the event of either of his grandchildren dying in the lifetime of his said daughters, he desired the share of them so dying should be transferred to the survivors, and if only one to him or her so surviving. Catharine Mary Peche died in 1836 intestate, leaving the defendant her only daughter. William Littlejohns died in 1842, having devised his property to his wife in fee, who died intestate, leaving the plaintiff her heir at law, and Christiana Littlejohns died in 1852 also leaving the plaintiff her heir at law. The last of the three daughters died in March, 1854. The question now arose whether the survivorship referred to the death of the tenants for life or not.

*Roupell* and *Evans* for the plaintiff; *R. Palmer* and *Hetherington* for the defendants.

The *Master of the Rolls* held, that the survivorship referred to the death of the tenant for life, and that the gift over divesting the shares given to the grandchildren did not take effect, and the defendant was entitled to one-third.

*Gibson v. Seagram.* June 25, 1855.

**MARSHALLING ASSETS.—FIRST AND SECOND MORTGAGES.**

*The first mortgagee on two estates sold them in a foreclosure suit, and after paying himself handed over the balance to the mortgagor's assignees. There was a second mortgagee on one of the estates only: Held, that he was entitled to marshal the assets as against the first mortgagee.*

THIS was a suit by the second mortgagee on an estate to compel a first mortgagee thereon, together with another estate, to have recourse in the first instance to such other estate. It appeared that in a suit by the first mortgagee to foreclose the mortgage, both the estates had been sold, and that he had, after paying himself, handed over the balance to the mortgagor's assignees.

*Giffard*, for the plaintiff, cited *Baldwin v. Belcher*, 3 Dru. & War. 173; *Lanoy v. Duke of Athol*, 2 Atk. 444; *Aldrich v. Cooper*, 8 Ves. 382; *Averall v. Wade*, Lloyd & G. 252.

*C. Chapman Barber*, for the defendant, referred to *Barnes v. Racster*, 1 Y. & C., Ch. 401; *Hughes v. Williams*, 3 M.N. & G. 683.

The *Master of the Rolls* held, that the assets should be marshalled, and made a decree for the plaintiff accordingly.

#### Vice-Chancellor Stuart.

*In re Jones' Settled Estates.* June 22, 1855.

**INVESTMENT OF FUND IN LAND.—TITLE.—CONVEYANCING COUNSEL.**

*Where the Court was satisfied as to the title, a reference was not made to the conveyancing counsel, under the 15 & 16 Vict. c. 80, s. 40, but the matter was adjourned to Chambers for inquiry.*

THIS was a petition for the investment of

6,000*l.*, part of the money paid for the Skerry Light House by the Trinity House, in the purchase of certain land. The title had been perused and approved of by Mr. Samuel F. T. Wilde, the conveyancer, and an order was now asked, without a reference to a conveyancing counsel.

*Dart* in support, cited *Gibson v. Woollard*, 24 Law J., N. S., Chan., 56; and the 15 & 16 Vict. c. 80, s. 40, which enacts, that "it shall be lawful for the Court or for any Judge thereof, when sitting at Chambers, to receive and act upon the opinion of conveyancing counsel in actual practice to be nominated as hereinafter-mentioned, in all cases in which, according to the present practice of the Court and of the Master's Office, it has been usual for the Master to require or receive the opinion of conveyancing counsel for his aid and assistance in the investigation of the title to an estate, with a view to an investment of money in the purchase or on mortgage thereof," &c.

The *Vice-Chancellor* said, that when he was satisfied in his own mind as to the title, he acted without a reference to conveyancing counsel, and the matter would be adjourned to Chambers to inquire into the title.

#### Court of Queen's Bench.

*Henderson v. Australian Royal Mail Steam Packet Company.* June 23, 1855.

PUBLIC COMPANY.—APPOINTMENT UNDER COMMON SEAL.—WHERE FOR PURPOSES OF COMPANY.

Held, that where a matter is connected with the objects of a company, the employment of a person therein need not be under the common seal.

Therefore, where a navigation company employed the plaintiff to bring from Sydney one of their ships which was unseaworthy, held that he could recover for his services, although his appointment was not under the common seal.

THIS was an action to recover remuneration for the plaintiff's services in bringing home from Sydney one of the defendants' vessels which was lying there and supposed to be unseaworthy. The defendants pleaded that they were a corporation and could not contract except under their common seal, to which the plaintiff replied that they were a trading company, and that his engagement was within the scope of their business as such. The defendants rejoined setting out their charter, to which the plaintiff demurred.

*Willes* and *Thorpe* for the plaintiff in support, citing *Clarke v. Guardians of Cuckfield Union*, 21 Law J., N. S., Q. B., 349; *Copper Miners' Company v. Fox*, 16 Q. B. 229.

*Lush* and *Mayne*, contra.

The Court said, that formerly the relaxation in favour of contracts by municipal corporations not under seal was infrequent and in insignificant cases, but that latterly and in regard to

trading companies, this had been extended to all matters connected with the objects for which they were constituted, and there would therefore be judgment for the plaintiff.

#### Court of Common Pleas.

*Neve v. Avery.* June 8, 1855.

COMMON LAW PROCEDURE ACT, 1854.—EQUITABLE PLEA IN ACTION OF EJECTMENT.

Held, that an equitable plea under the 17 & 18 Vict. c. 125, s. 83, cannot be pleaded in an action of ejectment, and such a plea was struck out under s. 86, the Court refusing to give judgment on a demurrer thereto.

THIS was a demurrer to a plea setting up a defence on equitable grounds under the 17 & 18 Vict. c. 125, s. 83,<sup>1</sup> in this action of ejectment.

*Unthank*, for the plaintiff, in support; *G. Tayler*, for the defendant, contra.

The Court said, that immediately the defendant appeared the plaintiff was entitled to make up the issue, and there was no declaration in ejectment, without which there could not be a plea. The best course would be to strike out the plea under s. 86,<sup>2</sup> but there could be no judgment on the demurrer.

#### Court of Exchequer.

*May v. Hawkins.* June 12, 1855.

COMMON LAW PROCEDURE ACT, 1854.—INTERROGATORIES IN ACTION OF EJECTMENT.—AFFIDAVIT.

Held, that the affidavit in support of an application to deliver interrogatories to the defendant under the 17 & 18 Vict. c. 125, s. 51, must state that the plaintiff has a good cause of action "upon the merits," and a rule was discharged where those words were omitted.

THIS was a rule nisi for leave to the plain-

<sup>1</sup> Which enacts, that "It shall be lawful for the defendant or plaintiff in replevin in any cause in any of the Superior Courts in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which entitled him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea; provided that such plea shall begin with the words 'for defence on equitable grounds,' or words to the like effect."

<sup>2</sup> Which provides, that "In case it shall appear to the Court, or any Judge thereof, that any such equitable plea or equitable replication cannot be dealt with by a Court of Law so as to do justice between the parties, it shall be lawful for such Court or Judge to order the same to be struck out on such terms as to costs and otherwise as to such Court or Judge may seem reasonable."



tiff in this action of ejectment to deliver interrogatories to the defendant under the 17 & 18 Vict. c. 125, s. 51.<sup>1</sup> The affidavit of the plaintiff in support stated that he believed that there was a good cause of action for the breach of the covenant to insure which was contained in the lease from himself to the defendant.

*Watson and Aspland* showed cause, referring to s. 52, which enacts, that "the application for such order shall be made upon an affidavit of the party proposing to interrogate, and his attorney or agent, or in the case of a body corporate, of their attorney or agent, stating that the deponents or deponent believe or believes that the party proposing to interrogate, whether plaintiff or defendant, will derive material benefit in the cause from the discovery which he seeks, that there is a good cause of action or defence upon the merits, and if the application be made on the part of the defendant that the discovery is not sought for the purpose of delay."

*Lusk* in support.

The Court said, that the act required the plaintiff to state he had a good cause of action "upon the merits," and the rule would accordingly be discharged.

*Evans v. De Castro.* June 21, 1855.

MINING COMPANY ON COST-BOOK PRINCIPLE. — SHAREHOLDER, LIABILITY TO CREDITORS.

*The purchaser of shares in a mine carried on on the cost-book principle, sent his transfer to the secretary, but in consequence of there being no meeting of the directors it had not been approved of by them within the time limited by one of the rules: Held, that he was not liable as a shareholder to the company's broker, and a rule was made absolute to enter a nonsuit.*

This was an action against a shareholder of the Court Grange Silver Lead Mine, to recover the amount claimed by the plaintiff as their broker at Aberystwith. On the trial before *Martin, B.*, it appeared that the defendant had purchased 10 shares in the mine, which was conducted on the cost-book principle, and had sent in the transfer to the secretary, and that in a subsequent letter to him he had stated himself to be the holder of 10 shares in the company, and made certain inquiries as to its prospects. By one of the rules it was provided, that the shares might be

transferred, but subject to the approval or disapproval of the directors to be signified to the transferor and transferee, within seven days after notice. This rule had not been complied with, in consequence of there having been no meeting of the directors. The plaintiff obtained a verdict, subject to a rule to enter a nonsuit, which had accordingly been obtained.

*Hyles, S. L., Edwin James, and Beasley* showed cause; *Bramwell and Hongman* in support.

The Court said, that although the defendant might have called on the secretary to complete his title, yet as regarded the plaintiff he was not liable, and the rule would be absolute to enter a nonsuit.

*Wilks v. Plant.* June 23, 1855.

COMMON LAW PROCEDURE ACT, 1854.— APPEAL FROM RULE ABSOLUTE FOR NEW TRIAL ON GROUND OF EXCESSIVE DAMAGES.

*An appeal from a rule absolute for the new trial of an action, on the ground of the damages being excessive, will not lie under the 17 & 18 Vict. c. 125, s. 35, and although the rule nisi was moved also on the ground of misdirection, inasmuch as the question of misdirection would be on the second trial.*

THIS was an action for maliciously preferring an indictment against the plaintiff for conspiracy and obtaining money on false pretences, and on the trial before *Platt, B.*, at the last Guildford assizes the plaintiff obtained a verdict with 1,500*l.* damages. A rule nisi was obtained for a new trial, on the ground of excessive damages and misdirection, against which

*Hawkins, Wordsworth, and Robinson* showed cause: *Shee, S. L., and M. Chambers* in support.

The Court having made the rule absolute on the ground the damages were excessive, refused an application under the 17 & 18 Vict. c. 125, s. 35,<sup>1</sup> for leave to appeal, as the question of misdirection would be on the second trial, and held that the section only applied to matters of law.

<sup>1</sup> Which enacts, that "in all causes in any of the Superior Courts, by order of the Court or a Judge, the plaintiff may with the declaration, and the defendant may with the plea, or either of them by leave of the Court or a Judge, may at any other time deliver to the opposite party or his attorney (provided such party, if not a body corporate, would be liable to be called and examined as a witness upon such matter) interrogatories in writing upon any matter as to which discovery may be sought."

<sup>1</sup> Which enacts, that "In all cases of motions for a new trial, upon the ground that the Judge has not ruled according to law, if the rule to show cause be refused, or if granted be then discharged or made absolute, the party decided against may appeal, provided any one of the Judges dissent from the rule being refused, or when granted being discharged or made absolute, as the case may be, or provided the Court in its discretion think fit that an appeal should be allowed; provided that where the application for a new trial is upon matter of discretion only, as on the ground that the verdict was against the weight of evidence, or otherwise no such appeal shall be allowed."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

~~~~~  
"Still attended at your service" —  
~~~~~

SATURDAY, JULY 7, 1855.

### STATE OF LAW REFORM.

We are now, it may be presumed, within a few weeks of the end of the Session of Parliament, and may not inappropriately take a brief review of the measures affecting the interminable subject of the so-called "Amendment of the Law," which have hitherto been under consideration, and those which yet remain for parliamentary decision.

Most of the Acts which have actually passed have been already submitted in *extenso* to our readers. They are the 18 Vict. c. 15, for the Protection of Purchasers in regard to Judgments of the Courts of Lancaster and Durham; the Re-registration of Judgments of the Superior Courts, Orders in Bankruptcy, Annuities and Rent Charges; — the 18 Vict. c. 13, amending the Lunacy Regulation Act by enabling the Lord Chancellor to empower Committees of Lunatics' Estates to grant Leases binding on Issue and Remainder-men; — the 18 Vict. c. 26, authorising the Judges to alter the Forms of Pleadings; — the 18 Vict. c. 30, relating to the Law of Sewers; — the 18 Vict. c. 27, repealing the Newspaper Stamp Duty; — the 18 Vict. c. 32, extending the Jurisdiction of the Stannary Courts; — Ecclesiastical Courts Jurisdiction for Defamation, c. 41; — the Administration of Oaths abroad, c. 42; — and Infants Marriage Settlements, c. 43.

The measures which have been proposed and abandoned or negated for the present are, — 1st. The Testamentary Jurisdiction Bill. 2nd. Vacating Seats in Parliament. 3rd. Execution of English Judgments in Ireland and Scotland, and of Irish and Scotch Judgments in England. 4th. The distribution of the Real Estates of Intes-

tates amongst Next of Kin instead of Heirs-at-Law. 5th. Stamping Bankers' Drafts.

The Bills which remain may be enumerated according to the several stages at which they have arrived.

Those which stand for *second reading* in the House of Commons relate to the Law of Ireland, — namely, Mr. Whiteside's six Chancery Bills, the short titles of which are: — Jurisdiction; — Procedure; — Receivers; — Sales of Estates; — Appeals; — Stamps. Some of these measures might well be consolidated. Subdivisions are useful to secure distinctness, but the same Bill might have treated, — 1st, of the Jurisdiction of the Court; and 2nd, of its Procedure; — taking in Receivers and Sales of Estates in the former, and Appeals and Stamps in the latter.

Next follows Mr. Cairns' Bill for the alteration of the Bankrupt Law in Ireland. This also has progressed no further than a first reading; and like the Chancery Bills, can scarcely be expected to pass through all the other stages in the Commons in time for consideration in the House of Lords.

The Bills which have been read a second time and are now "*in Committee*," may be thus classed: — The Limited Liability and Partnership Bills. These the Government intend to carry forward to maturity. Perhaps the lawyers have no personal concern with these alterations of the general law, which do not affect the practice of the Courts, nor the immediate interests of the Practitioners; but as Contracts of Limited Liability Partnerships must generally be prepared by professional men, and in the execution of them will often produce litigation, we cannot be indifferent to the

proposed alterations of the law. Notwithstanding some objections raised against the principle of the measure, and in spite of some difficulties in its practical details, we entertain a favourable opinion of the benefits which will result from the proposed change, and conceive that by proper safeguards the creditors of these partnerships may not only be amply protected, but that frequently, if not generally, they will be in a better position in regard to the distribution of the assets of the firm, in cases of failure, than they are at present. Instead of relations or friends who have lent money to the trader being entitled, by the securities they hold, to rank before other creditors, they will themselves be liable to the extent of the capital subscribed, and can obtain a dividend only where there is a surplus after paying all the creditors. Conceiving that the interests of the Public and the Profession are closely united, we wish success to the proposed measure.

In this stage of progress there are some other Bills which may be briefly noticed. The Law of Bankruptcy and Insolvency in Scotland, and the Tenants' Compensation in Ireland, are important measures for those parts of the empire. There are also several Bills especially affecting the interests of the public,—viz., Metropolitan Buildings; Metropolitan Local Management; the Removal of Nuisances; the Public Health; and the Regulation of Passengers by Sea.

A Bill for the alteration of the Law of Mortmain is also in Committee, and another for the further amendment of the Law of Merchant Shipping.

The Church Rates Abolition Bill, if it passes the Lower, will probably be stopped in the Upper House; and the same result may be anticipated with regard to the alteration of the Law of Marriage with Sisters-in-Law and Nieces. The Grand Juries Bill, if it should come out of Committee, will scarcely proceed much further.

The Youthful Offenders Bill, it is desirable should pass, and there is yet time to perfect it. This disposes of the Bills in Committee, which have originated in the Commons, and have yet to pass all their stages in the House of Lords.

In the class of "*Bills as amended to be considered*," we have Mr. Keating's Bills of Exchange and Promissory Notes Bill for preventing frivolous defences. The Profession gives a decided preference to the remedy proposed by this measure over the Scotch "summary diligence" plan; and the House of Commons having so far pro-

nounced in its favour, it may soon be carried to the Upper House. There it will probably receive some check from Lord Brougham, who has a predilection in favour of the Scotch system, but after the report of the Select Committee of the House of Commons, the opposition of the noble lord ought not to prevail. If, however, his lordship's influence should predominate, the evil complained of will remain undressed, for the other Bill cannot, in consistency, be now revived and pass this Session.

Amongst the Bills for "*third reading*" is one relating to the Qualification of Justices of the Peace, which is expected to pass. And the Amendment of the Law of Bills of Lading, seems likely to be effected.

The Cinque Ports' Bill which passed the Commons for abolishing the peculiar jurisdiction of those ports and transferring it to the ordinary jurisdiction in the county of Kent, has been altered in the House of Lords, and their amendments remain for consideration.

We turn now to the Bills which originated in the HOUSE OF LORDS and having there passed, are now in progress in the House of Commons.

Those which are appointed for *second reading* are the Leases and Sales of Settled Estates Bill and the Charitable Trusts Bill. There appears to be no serious objection raised to these measures, and we incline to think they will be beneficial.

The Lords' Bills in *Committee* of the Commons are the Criminal Justice Bill and the Despatch of Business in the Court of Chancery Bill. We understand the clause for increasing the salaries of the clerks of Records and Writs, from 1,200*l.* to 1,500*l.* on the transfer of the business of the Report Office has been struck out:—it appearing probably that three clerks of Records and Writs, with a considerable staff of clerks, will be competent to discharge the duties of the office without extra attendance or laborious exertion. We are also informed that the Solicitor-General is convinced of the inexpediency of limiting the powers of London Commissioners to the administration of oaths at their own offices or at the deponents' residence when sick. The inconvenience of attending at the Record Office during a limited time is to many persons very great, and now that affidavits are received as evidence conditionally, every facility should be afforded to collect such evidence: If this clause

should be withdrawn, we trust the Bill will pass.

Then there are some other Bills which have commenced in the House of Lords, and not yet sent down to the House of Commons. Of these we may mention the Assizes and Sessions Bills, introduced by the Lord Chancellor, and the Speedy Trial of Offenders Bill brought in by Lord Brougham. The Government intend to press forward the Lord Chancellor's Bill which will increase the number of Assizes and Sessions. To which may be added the Irish Landlord and Tenant Bill, and the Irish Property Bill.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### ADMINISTRATION OF OATHS ABROAD.

18 & 19 VICT. C. 42.

Oaths may be administered by ambassadors and other British ministers abroad ; s. 1.

Affidavits taken before ambassadors, &c., abroad may be used in Courts in the United Kingdom ; s. 2.

Documents to be admitted in evidence without proof of the seal or signature of the ambassador or other official person ; s. 3.

Persons swearing or affirming falsely guilty of perjury ; s. 4.

Person forging seal or signature guilty of felony ; s. 5.

The following are the Title and Sections of the Act :—

An Act to enable British Diplomatic and Consular Agents Abroad to administer Oaths and do Notarial Acts.

[2nd July, 1855.]

Whereas by an Act of the 6 Geo. 4, c. 87, powers are given to British consuls-general and consuls to administer oaths and do notarial acts in the foreign places to which they are appointed ; and it is expedient that the like powers should be given to ambassadors and other diplomatic agents and to vice-consuls and consular agents abroad : Be it enacted as follows :—

1. From and after the passing of this Act, it shall and may be lawful for every British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or of legation exercising his functions in any foreign country, and for every British Vice-consul, acting-consul, pro-consul, or consular agent (as well as every consul-general or consul) exercising his functions in any foreign place, whenever he shall be thereto required, and whenever he shall see necessary, to administer in such foreign coun-

try or place any oath or to take any affidavit or affirmation from any person whomsoever, and also to do and perform in such foreign country or place all and every notarial Acts or act which any notary public could or might be required and is by law empowered to do within the United Kingdom of Great Britain and Ireland ; and every such oath, affidavit, or affirmation, and every such notarial act, administered, sworn, affirmed, had, or done by or before such ambassador, envoy, minister, chargé d'affaires, secretary of embassy or of legation, vice-consul, acting-consul, pro-consul, or consular agent, shall be as good, valid, and effectual, and shall be of like force and effect, to all intents and purposes, as if such oath, affidavit, or affirmation, or notarial act, respectively, had been administered, sworn, affirmed, had, or done before any justice of the peace or notary public in any part of the United Kingdom of Great Britain or Ireland, or before any other legal or competent authority of the like nature.

2. Affidavits and affirmations so taken as aforesaid under the said Act of Geo. 4 or this Act shall and may be received, read, and made use of in and before any Court of law or equity or other judicature whatever in any part of the United Kingdom, and the Judges and officers thereof, in or in relation to any action, suit, cause, matter, or proceeding in or before any such Court or judicature, in like manner, and shall be of the same force and effect, as affidavits and affirmations taken in or before such Court or judicature, or by any person duly commissioned or authorised by such Court or judicature to take such affidavits or affirmations, and shall be filed and dealt with accordingly.

3. Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any British ambassador, envoy, minister, chargé d'affaires, secretary of embassy or of legation, consul-general, consul, vice-consul, acting consul, pro-consul, or consular agent, in testimony of any such oath, affidavit, affirmation, or act having been administered, sworn, affirmed, had, or done by or before him, shall be admitted in evidence, without proof of any such seal and signature being the seal and signature of the person whose seal and signature the same purport to be, or of the official character of such person.

4. Any person knowingly and wilfully making any false oath, affidavit, or affirmation before any person having authority to administer such oath or take such affidavit or affirmation, under the said Act of King George the Fourth or this Act, shall be deemed guilty of perjury, and such offender may be charged, proceeded against, tried, and dealt with in any county or place in the United Kingdom in the same manner in all respects as if the offence had been committed in such county or place.

5. If any person shall forge any such seal or signature as aforesaid, or shall tender in evidence any such document as aforesaid with a false or counterfeit seal or signature thereto,

knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of four years, or to be imprisoned, with or without hard labour, for any term not exceeding three years nor less than one year; and whenever any such document has been admitted in evidence by virtue of this Act, the Court or the person who has admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period, and subject to such conditions, as to the said Court or person shall seem meet; and every person charged with committing any felony under this Act may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in the county, district, or place in which he may be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence laid and charged to have been committed, in any county, district, or place in which the principal offender may be tried.

#### ECCLESIASTICAL COURTS.

18 & 19 VICT. c. 41.

Jurisdiction of Ecclesiastical Courts in England, &c., in suits for defamation abolished; s. 1.

Persons in custody for defamation under order of Ecclesiastical Courts to be discharged, but such order not to be made until costs are paid; s. 2.

The following are the Title and Sections of the Act:—

An Act for abolishing the Jurisdiction of the Ecclesiastical Courts of England and Wales in Suits for Defamation. [26th June, 1856.]

Whereas the jurisdiction of the Ecclesiastical Courts in suits for defamation has ceased to be the means of enforcing the spiritual discipline of the Church, and has become grievous and oppressive to the subjects of this realm: Be it therefore enacted, as follows:—

1. From and after the passing of this Act, it shall not be lawful for any Ecclesiastical Court in England or Wales to entertain or adjudicate upon any suit for or cause of defamation, any Statute, Law, Canon, custom or usage to the contrary notwithstanding.

2. In the case of every person committed to gaol before the passing of this Act under any writ de contumace capiendus, issued in consequence of any proceedings before any Ecclesiastical Court in any cause or suit for defamation of character, the Judge of the Ecclesiastical Court before whom such proceeding shall have been had shall make an

order upon the officer in whose custody such person is for discharging such person out of custody, and such officer shall, on the receipt of such order, forthwith discharge such person; and it shall not be necessary for such person to take any oath of future obedience to his or her ordinary: Provided always, that such order shall not be made unless the costs lawfully incurred in any such suit shall have been previously paid into the registry of such Ecclesiastical Court, or unless the person against whom such costs shall have been decreed shall have already suffered imprisonment for one month in consequence of non-payment thereof.

#### ALTERATIONS IN COMMON LAW PLEADINGS.

18 VICT. c. 26.

The preamble recites the 13 & 14 Vict. c. 16.

Powers conferred by the recited Act on Judges of Superior Courts of Common Law at Westminster continued.

The following is the Title and Section of the Act:—

An Act to continue an Act of the Thirteenth and Fourteenth Years of Her present Majesty, for enabling the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading. [25th May, 1855.]

Whereas by an Act of the 13 & 14 Vict. c. 16, intituled "An Act to enable the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading," powers were given to the Judges of the Superior Courts of Common Law at Westminster, within five years from the passing of that Act, to make such alterations in the mode of pleading in the said Courts, and in the mode of entering and transcribing pleadings, judgments, and other proceedings in actions at law, and in the time and manner of objecting to errors in pleadings and other proceedings, and in the mode of verifying pleas and obtaining final judgment, without trial in certain cases, and such regulations as to the payment of costs, and otherwise for carrying into effect the said alterations, as to them may seem expedient: And whereas the said powers by the said Act conferred are about to expire, and it is desirable that the same should be further prolonged: Be it therefore enacted, That the powers conferred by the said hereinbefore-recited Act on the Judges of the said Superior Courts of Common Law at Westminster shall be continued for a period of five years from the passing of this Act, subject always to the provisions and conditions in the said recited Act contained as to any rules, orders, and regulations which may be made by the said Judges under and by virtue of the said powers.

## ASSIZE AND SESSIONS BILL.

## ANALYSIS OF CLAUSES.

Her Majesty in Council may order adjoining counties to be united for the purposes of this Act; sect. 1.

Her Majesty in Council may order counties of cities to be united with the counties surrounding them for the purposes of this Act; s. 2.

Such order to continue in force until revoked by her Majesty in Council; s. 3.

When counties are so united Commissions may be issued into either, or into the county at large; s. 4.

Prisoners in the gaol of a county for which Commissions are not issued to be removed to the gaol of the county for which Commissions are issued; s. 5.

When the trial or sentence of any prisoner removed under the preceding section is postponed the Court may remand the prisoner to the gaol from whence he was removed, to be there imprisoned till the next assizes; s. 6.

Where counties are united the Court may sentence prisoners to be punished either in the county where they are convicted, or in that where the offence was committed, and in the latter case may order the prisoners to be taken back to the county from whence they were removed; s. 7.

The treasurer of the county in which any offence is alleged to have been committed shall pay to the treasurer of the prison in which the offender is confined the expenses of his maintenance, imprisonment, &c.; s. 8.

An account of the expenses of prisoners to be delivered; s. 9.

Any disputes to be settled by arbitration; s. 10.

Arbitrating barrister may state a special case for the opinion of any Common Law Court at Westminster, or raise any question for such Court on his award; s. 11.

In case barrister die, &c., before making his award, another may be appointed; s. 12.

Prisoners in the gaol of a county of a city to be brought before the Court for the county at large for trial, &c.; s. 13.

When the trial or sentence of any prisoner removed under the preceding section is postponed, the prisoner shall be taken back to the gaol from whence he was removed, and there imprisoned till the next assizes; s. 14.

Prisoners convicted at the assizes for a county at large of offences committed in a city

to be removed into the city, and there punished; s. 15.

Prisoners while under removal to be detained in legal custody; s. 16.

Inquisition, &c., to be returned to the proper officer of the Court from the county for which no commission is issued; s. 17.

Process may be issued against persons at large on the finding of an indictment against them, and witnesses may be compelled to attend at the trial, &c.; s. 18.

Costs of prosecutions and rewards may be ordered to be paid; s. 19.

Courts held for one of two or more adjoining counties to have the same authority as if held in each of such counties; s. 20.

Offences which are triable in the county for which Commissions are not issued may be tried, &c., in the county for which Commissions are issued; s. 21.

Offences committed in a county of a city united with a county at large may be tried, &c., in such county at large; s. 22.

Form of recognizance where counties are united; s. 23.

Form of recognizance where a county of a city is united with a county at large; s. 24.

Her Majesty in Council may make rules for effecting the purposes of this Act; s. 25.

Justices of the peace and recorders shall hold four additional Sessions, unless the Home Secretary shall dispense with any of them; s. 26.

The times of holding the additional Sessions to be fixed at the Epiphany Sessions; s. 27.

Justices of the peace may determine that a legal chairman with a salary shall be appointed, and thereupon the Crown may appoint such a chairman, who shall be a justice of the peace and have the same authority as chairman now have; s. 28.

Chairman to take oaths and make a declaration before acting; s. 29.

The Bill has been amended in Committee by altering the 28th clause, and directing that the justices of the peace may determine that a "legal assistant chairman" should be appointed; and providing that such assistant chairman shall not interfere in any business relating to county rates, or licenses of inns, &c., or the removal of officers.

And by a new clause the justices may determine that an assistant chairman is no longer necessary, and thereupon the Crown may cancel the appointment.

## NOTICES OF NEW BOOKS.

*Blackstone's Commentaries systematically Abridged and adapted to the existing State of the Law and Constitution, with great Additions.* By SAMUEL WARREN, of the Inner Temple, Esq., D.C.L., F.R.S., Recorder of Hull, and one of her Majesty's Counsel. London: W. Maxwell. Pp. 834.

THIS work is of a highly important and interesting character both to the Profession and the Public. It must be regarded as a substitute for one long looked for, in consequence of announcements from time to time that Mr. Warren's leisure was occupied with the preparation of an elaborate edition of the entire Commentaries. We are not in the least surprised that the idea is at length abandoned, for the magnitude of such an undertaking is necessarily on too great a scale to be consistent with the sweeping and incessant changes now made in our laws. Mr. Warren, in his Preface to the work before us, touchingly indicates his labour lost on the above score: "The labour of a *whole long vacation* has several times been rendered useless by the alterations effected in the ensuing Session of Parliament!" And yet it is of the utmost importance for both professional and academic purposes, that there should be some one portable work, exhibiting faithfully, and comprehensively, the existing condition of our laws and constitution—to which reference would be easy by a lucid arrangement and a full index. In the handsome and very cheap volume before us, this has been most admirably effected by Mr. Warren, who is indeed the *Author* of two-thirds of the nine hundred pages of which it consists.

"It is considered," says Mr. Warren, "that the proper method of preparing for the public such a work as the present, is to conceive, if possible, how Sir William Blackstone would now look at the edifice of our laws and constitution after a century's legislation, giving him credit for being imbued with the spirit of an age entitled to be regarded as one of progress and enlightenment. It has been endeavoured to do this, in the present volume, which may be regarded as a *SYNOPSIS* of our laws and constitution as they stand in the year 1855." Had the whole Profession been canvassed, we doubt not that its voice would have been unanimous in indicating Mr. Warren as the gentleman best qualified for such an undertaking: like Blackstone him-

self, conspicuous for his eminent attainments in both law and letters.

Our space prevents a fitting analysis of this elaborate performance; a careful consideration of which prompts us heartily to express a wish, that every lawyer and member of either House of Parliament, every clergyman, every member of our universities, every one interested in the great work of education, would possess himself of a work shedding a flood of light on the existing laws and constitution of this great country. We know of no other that can compete with it; and it supplies a void which every one has felt for years. It is fortunate, indeed, that Mr. Warren has had the courage and patience to qualify himself for his work, by some twenty years of labour at every interval of leisure.

A conspicuous portion of the work is that "scrupulous fidelity and even judicial partiality," to which he lays claim, in his graceful dedication to the Earl of Derby, as Chancellor of the University which nurtured Blackstone. Mr. Warren's well-known conservative opinions, for instance, has not blinded his eyes to the enlightened innovations on ancient things, consequent upon the passing of the Reform Bill; and we would point to the impressive and masterly history of the last twenty years legislation, with which (pp. 704—726,) the work closes, as an irresistible proof of his title to the implicit confidence of his readers.

"It were to be wished that the changes in our laws effected during the last 19 years, and throwing into the shade those of several centuries recorded in our annals, could have been reviewed by an eye so discriminating, and delineated by a pen so masterly, as those of Sir William Blackstone. There is a special reason for exhibiting a faithful picture of legislation during this interval; that it follows, and is largely due to, the energy and activity infused into the Legislature, by the Acts passed in the year 1832, for amending the representation of the people. As in all great changes, the one in question was inaugurated with sanguine predictions of good, and confident forebodings of evil. It is for the impartial chronicler of our laws and institutions, to afford an opportunity for judging how far events have justified the hopes and fears of those respectively favouring, and deprecating, so great and sudden a strengthening of the democratic element in our constitution. The change in question has already gone far towards verifying the prediction of one of its responsible promoters, that it must 'influence the character of the Government and the Legislature in all future

<sup>1</sup> Hansard, vol. ii. col. 1318, 9 (3rd Ser.), Viscount Palmerston.

times, and impress its influence on the whole frame of society.' A consideration of what has been done, and attempted, since the year 1852, suffices to remind us that activity and energy in the Legislature, must be associated with prudence, moderation, and forethought, in order to secure the enduring results of bold and beneficial legislation."

Another leading and truly admirable characteristic of this work, is its systematic development of the Christian character of our institutions. From the solemn and stately language of the introduction to the concluding paragraph of the work, this object is never lost sight of, and for this we tender Mr. Warren our cordial acknowledgments. This communicates a pure and lofty tone and character to the entire work, which must exercise a most salutary influence. The next feature of the work which struck us in an examination of its pages (not near so deliberately as we could have wished), is the ease and felicity with which principles are expounded; in a style at once so chaste and picturesque, as to challenge the observation of the most idle reader, and fix in his mind the subject so illustrated. This is the mode, for instance, in which we are introduced to the vast changes effected in the Law of Evidence.

"Such fundamental changes have been effected in the Law of Evidence within the last ten years, or even a much shorter period, that it may be said to stand upon quite a new basis, and to be thoroughly illuminated by the light of good sense. In no department of our jurisprudence has the hand of innovation been bolder or more successful. The Legislature has liberated the Law of Evidence from shackles which had for centuries impeded its search after truth; and whoever can contrast the present with the very recent state of that law, will feel astonishment that such impediments should have been tolerated so long. English law books swarm with complex rules, and decisions of Courts carrying out those rules with a sort of relentless and excruciating ingenuity, the effect of which is now seen by all, to have been only to shut, carefully, as many apertures as possible, through which that truth might be seen, which Courts of Justice were instituted to discover. This arose from a marvellous distrust of the conscientiousness of witnesses, and the intelligence of juries, together with an inversely strong confidence in the means resorted to by law for obviating such evils." To see whether these remarks are well or ill-founded, it may be observed, that down to the year 1843, the law excluded from the witness-box a person of

spotless integrity, of the greatest intellect, and beyond all suspicion of undue bias or motive, if it could only be made out by a train of subtle reasoning that he might have a single farthing's interest in the ultimate issue; while the same law admitted into the witness-box those influenced and tempted, by the strongest ties of natural affection, to deceive.

"At length, in the year 1851, after a series of steps in that direction, the Legislature, by a single section of Statute 14 & 15 Vict. c. 99, let in a flood of light on every question, thenceforth made the subject of legal investigation, by removing the incapacity of THE PARTIES themselves to any legal proceeding. This effected a complete revolution in this extensive department of the law. Those who had for ages stood with sealed lips in Courts of Civil Justice; while their characters, properties, rights, and liberties were assailed, by falsehood and fraud, with perfect impunity; those who alone knew the true facts in dispute, and yet were compelled to look on with silent indignation, while futile and illusory efforts were being made to prove those facts, were, by the fiat of the Legislature, suddenly given the power of speech, and enabled, in their own persons *et* *voce*, or by affidavit, to state those facts before competent authorities. From that moment fraud and chicanery received a desperate check; and claims were justly enforced and resisted, which would otherwise have continued to be withheld, or submitted to, unjustly. It must not, however, be disguised, that these great advantages have been not unattended with the countervailing disadvantages of exposure to a temptation to commit perjury, too frequently proving irresistible."

This work, modestly called "a systematic abridgment," partakes far more of the character of a deeply-considered original work; into which is incorporated the very essence of all that remains in force as expounded by Blackstone. There are no fewer than 70 chapters traversing every department of our laws, with a view (wisely discarding as Mr. Warren does, merely historical and antiquarian topics) to exhibit them *as they now are*; all the Parliamentary and municipal changes; and those connected with the administration of justice. In addition to this, about a dozen chapters are devoted to the exposition of the leading *doctrines* of law, and frequently called into action by the ordinary affairs of life, and which must prove invaluable to the legal student and practitioner. An extremely copious index will greatly add to its value for judicial and professional use, while an extended series of "Questions for Examination," on every chapter (which will be found in the Appendix), will enable the student to become, so to speak, his own tutor.

An interleaved copy of this work would

\* "A popular sketch of the former and existing Law of Evidence may be seen in Chapter xxv. of Warren's Manual of Parliamentary Election Law, Vol. II. p. 580-628."



be invaluable to the professional reader and student, as forming a common place book for the acquisition of new matter from time to time contributed by Acts of the Legislature, and decisions of the Courts of Justice.

If we may be allowed to offer an opinion, we would venture to recommend that in a new edition of the work, the distinguishing marks between Mr. Warren's original matter and the text of Blackstone should be obliterated. The latter is in the proportion of less than one-third of the volume, and sure we are that Mr. Warren need not apprehend that even his critical and fastidious readers will notice any inferiority of composition between his pages and those of his celebrated predecessor.

## LAW OF ATTORNEYS AND SOLICITORS.

### ORDER FOR TAXATION OF BILL OF COSTS AND PAYMENT UNDER 6 & 7 VICT. C. 73, s. 37.

A RULE *nisi* had been obtained to set aside an order of *Crowder, J.*, at Chambers, referring for taxation the bill of costs of an attorney, with an order for payment, under the 6 & 7 Vict. c. 73, s. 37. It appeared that the application was made *ex parte* after an order had been obtained to change the attorney.

*Jervis, C. J.*, said, "I find, upon inquiry of the Master, that the practice is, to hear both parties, and not to make these orders on an *ex parte* application. \* \* \* The order is to be made 'with such directions, and subject to such conditions, as the Court or Judge making such reference shall think proper.' The Judge has to exercise a discretion. There must be a previous summons." The rule was accordingly made absolute to set aside the Judge's order. *Gillow v. Rider*, 15 C. B. 729.

## LAW OF VENDOR AND PURCHASER.

### COSTS OF ATTESTED COPIES OF DEEDS RETAINED AND COVENANTED TO BE PRODUCED.

By one of the conditions of sale on a contract to purchase lands it was provided that, as the title-deeds related to other property of greater value, the vendor should retain the custody thereof, and that a covenant would be entered into for the production of such of them as were not enrolled, and for giving attested or other copies thereof to the respective par-

chasers at their expense. The defendant refused to complete unless attested copies of the title-deeds retained by the plaintiff were delivered.

On a claim to enforce the specific performance of the contract, Vice-Chancellor Wood said:—

"Independently of the high authority of Lord Eldon, it is clear there is sound sense in the observations which have been cited from the report of *Boughton v. Jewell*, 15 Ves. 176:—'If the purchaser had no intimation that he could not have the deeds, he is entitled to attested copies at the expense of the vendor; as, if he had notice that he was not to have the deeds, he would regulate his bidding accordingly, conceiving that he was to bear the expense of procuring copies.' The present case goes further than that put by Lord Eldon. Here the purchaser not only had notice that he was not to have the deeds, but the vendor expressly tells him,—'I mean to retain the deeds, but nevertheless I will do something for you, I will enter into a covenant to give you attested copies.' He says in effect,—'You will get my covenant, but nothing else.' This is clearly the meaning of the condition. The construction attempted to be put upon it by the purchaser would amount to this:—that he is in the first instance to have attested copies at the vendor's expense, and then if he loses those, or has some extraordinary demand for duplicates, is to have others at his own expense by force of the covenant,—a construction which seems to me far too forced and unnatural to be adopted.

"I quite concur in the remark of Lord *Cottemham, C.*, that the Court will, wherever it is possible, discourage catching stipulations in conditions of sale; but here there is no stipulation of that description.

"There must be a decree for specific performance, with costs." *Cotton v. Scudamore*, 1 Kay & J. 321.

## UNITED LAW CLERKS' SOCIETY.

THE Twenty-Third Anniversary Festival of this Society took place on Wednesday, the 13th June, at the Freemason's Tavern. The Right Hon. The Lord Justice Turner presided, and was supported by the Right Hon. The Lord Justice Knight Bruce, The Vice-Chancellor Sir William Page Wood, Sir John Fatte-

son, Mr. Roundell Palmer, Q.C., M.P., The Master Turner, and a numerous body of the Profession, amongst whom we observed Mr. W. Palmer, Mr. Piggott, Mr. Rasch, Mr. Elderton, Mr. Shebbeare, Dr. Spinks, Mr. Steere, Mr. Registrar Whitehead, Mr. J. Williams, Mr. Calthrop, Mr. H. Cholmeley, Mr. Cookney, Mr. Cookson, Mr. Coulthard, Mr. Fox, Mr. Harwood, Mr. A. Jones, Mr. Keane, Mr. Lee, Mr. Maugham, the Secretary of the Incorporated Law Society, Mr. Milne, Mr. Registrar Milne, Mr. C. Milne, Mr. William Murray, Mr. Rose, Mr. Sanders, Mr. Wingfield and many other members of the Profession. About 300 gentlemen sat down to dinner.

The *Chairman*.—My lords and gentlemen, the first toast which it is my duty to propose to you this evening is one which needs no recommendation from me, and on which indeed I should be unpardonable if I were to offer you more than a few observations. We have lived for many years under the mild sway of our most gracious Sovereign; we have seen during that period wonderful changes take place in the countries around us; we have seen kingdoms overthrown, and thrones tottering and falling; but this country has been spared from any such misfortune. It has been so spared, gentlemen, because her Majesty has lived, and ever will live, in the hearts of her people; and her throne can be no more shaken than the people of this country can be disturbed. I have therefore great pleasure in proposing to you the health of her Majesty The Queen.

The toast was responded to with the most enthusiastic loyalty.

The *Chairman*.—My lords and gentlemen, in drinking the last toast, which I had the honour to propose to you, we have paid our respectful duty to her Majesty, in her public and political character; but it is not, happily, in that character alone that this country has to regard her Majesty with affection and esteem. We have to regard her, not only as the mother of her people, but as the mother of her children; and gentlemen, in regarding her Majesty in that character, it is impossible for us to overlook the assistance she derives from the Consort, with whom she is associated. This country owes a debt of deep gratitude to his Royal Highness Prince Albert; and it owes that debt to him on many accounts. First and foremost on this—that placed in the high situation in which he stands, he has stood aloof from party in this country; secondly, we owe him every mark of affection and regard for the attention he has paid to the interests of this country, and for his devoted promotion of the arts and sciences. But above all, we owe to him the strongest marks of affection for the care which he has bestowed upon the education of our future sovereign. Nobody can estimate the importance to this country of the

heir apparent to the throne of these realms, being brought up in the same honest principles which distinguish his most excellent mother. Gentlemen, we have every reason to hope and to believe that this will be the case,—and it is not to Prince Albert alone that we owe our duty, but it becomes us also to offer our tribute of respect to his Royal Highness Albert Prince of Wales. We may do so now with safety; happily the time has not yet arrived, and may God grant that it never may arrive, in which the evils of party gathering around the throne of the heir apparent in this country has become possible, and I am quite sure if he follows the steps of his most excellent father, that calamity never will befall us. Gentlemen, it is not to the Prince of Wales only that we must pay our respects, but also to the other members of the Royal Family. A united family is to every one in private life a great blessing; it is in public life an inestimable advantage, for it sets an example to all the inhabitants of this country and all the subjects of these realms. Gentlemen, I have, therefore, great pleasure in proposing to you the health of "His Royal Highness Prince Albert, Albert Prince of Wales, and the rest of the Royal Family."

The *Chairman*.—The toast which I am now about to propose to you, is one, I believe, which is not generally given at these anniversaries, but I am quite sure that every one here present will feel that the Committee have exercised a most wise discretion in having inserted that toast in the list. It is, gentlemen, the toast of the "Army and Navy;" and although I don't find it upon the paper, I shall take leave to add to it "Our brave Allies." This toast, gentlemen, follows most correctly upon that of the Royal Family, for it affords an opportunity of paying a just tribute of respect and admiration to one of the worthiest and the best, and the noblest members of that family; one, who, holding a high position in this country, respected and beloved by all ranking among the highest, enjoying every luxury which man can enjoy, hesitated not to sacrifice all those comforts to his duty to his country; one who, in the discharge of that duty has nobly distinguished himself, who has been ready to meet the enemies of his country, and ready also to support his troops. Gentlemen, it is not to the Royal Duke to whom I have alluded—it is not even to the distinguished officers who have led our troops on to battle, that our thanks are alone due. They are due to the common soldiers of the country—to men who have encountered perils and endured privations without complaint, or murmur, or dissatisfaction. Gentlemen, too many of them have been left upon the field of battle; all that we can say upon that subject is, that they have died as every soldier wishes to die, in the field of glory. Gentlemen, it is not to the army only, but it is to the navy also that we have to render our thanks. It is to me a very great satisfaction that the opportunity has at last happened for the navy displaying its

powers. I have from early life been well acquainted with naval men; I have seen the boldness—I may almost say the reckless indifference to danger—by which those men are distinguished; and, gentlemen, every step which has been taken during the present war, whether on land or at sea, has eminently proved that these men at the present day are as equal, and as able to discharge their duty as I knew them to be some 40 years ago. Gentlemen, the late successes which have attended our arms, both on land and at sea, give us great hopes of ultimate success, but whether we succeed or not, of this I am confident—that any failure which may happen will not be attributable to the want of courage or discipline, either in our soldiers or in our sailors—neither, I think, will it be attributable to the want of courage or of discipline on the part of our brave allies. I have, therefore, great pleasure in proposing for the first time at these anniversaries, but I hope it will be repeated on future occasions, “The health of the Army and Navy and of our brave Allies.”

The *Secretary* (Mr. Rogers) read the Annual Report.

The *Chairman*.—My lords and gentlemen, it now becomes my duty to propose to you the toast which may properly be called the toast of the evening. You have heard from the secretary the report of the year's proceedings, and I believe if I were to speak to you now from this time until midnight I should say nothing more agreeable to you, and I am perfectly assured that I could say nothing more satisfactory to myself than to congratulate you upon the result of this report. Gentlemen, this Society has now existed for a period of 23 years. It commenced with very small beginnings, and I have great satisfaction in observing from the papers before me that it commenced at the instance of some of the Law Clerks themselves. It has gradually progressed and thrived; and we have now a Society consisting of 570 members, with a capital somewhere about 18,000*l.*, and with an income derived from the contributions of the members alone of 1,200*l.* a year. Gentlemen, you must not suppose that from that state of the numbers of the members of the Society, or from that state of the funds, or the income, of the Society, that it is more than able to meet the demands upon it. I shall have occasion, before I sit down, to point out to you that it is deficient in numbers, and requires aid both in point of capital and in point of income. But I refer to these matters as the best and most conclusive proof that this Society is founded upon a firm and well-considered and well-weighed principle. If, gentlemen, the tree be required to grow it must be planted in a genial soil; if the superstructure be required to stand it must rest upon a sound foundation; and when we see the tree thriving and the superstructure standing we may be well assured that the one has been well planted, and that the other has been well founded. It is with this view I have desired to call your attention to

the existing state of the Society as a proof of its being well-established and founded upon sound principles. We are not here, gentlemen, dealing with our hospitals, with our schools, or with our other eleemosynary institutions. Each of these institutions has its merits, and sorry, indeed, should I be that one word should fall from me that should tend in any degree to disparage them; but what I look to on the present occasion is the peculiar merit of this institution. It is founded, gentlemen, by those, and for those who are willing to help themselves, and willing to extend their aid to others. Gentlemen, it is difficult perhaps, amongst the many charities which surround us, to select those which are best deserving of our support and encouragement; but I know no principle by which we can be better guided than to look at the objects and motives of those by whom the charity is established. If they are willing to render assistance to themselves as far as their ability extends, and if they are willing to extend that assistance to others, they instantly become deserving of the best encouragement which society can give to them. All such institutions have claims upon the public in general, for they tend most essentially to promote the good will and feeling of man towards man. But if this Society has claims upon the public, what are its claims upon us? Who amongst us but is aware of the advantages which we all derive from having an honest, well-conducted, and, I may add, affectionate clerk. No man can go through the labours of a profession like ours without at times being subject to that irritation which exhaustion will produce: what immense benefits are conferred upon us by having at hand one who is willing to attend, and able to watch our infirmities, and to administer to our comforts. Passing from one branch of the Profession to another what advantage is equal to that which the solicitor derives from having a clerk to whom he knows that he may entrust business with confidence and with satisfaction. If those duties and feelings exist on the part of those in whose service the clerk may be, it must not be forgotten that correlative duties exist on the part of the clerks. I shall not trespass upon your attention by dwelling at any length upon that, and I abstain from doing so from this very simple cause—that I do not believe—and I speak from experience no less than observation—I do not believe that there exists a body of men to whom so much is entrusted, by whom so much evil might be effected, who discharge their duties more honestly and more ably than the law clerks have done. Gentlemen, speaking of the higher branches of the Profession,—and I use that expression in no feeling of pride, but simply because it is the first that occurs to me,—speaking of the higher branches of the Profession, who does not know that the whole income of the barrister is in a great degree at the command of the clerk; and yet who knows, except in very rare instances, of any dishonesty on the part of the clerk? Passing from that

branch of the Profession to the solicitors, who does not know how much of the important business of a solicitor is entrusted, necessarily intrusted, to the clerks? who does not feel and know that what is required to be restrained on such occasions is the eagerness of the clerk to discharge his duty to his master in the absence of the principal? My experience has led me, both at the Bar and upon the Bench, daily to observe, that what has required a check has been—not the disposition on the part of the clerk to do his duty rightly and properly—but the disposition to urge the interests of his master beyond what he might be required justly to do. Gentlemen, I would call, also, if I might venture to do so, the attention of the clerks to one other consideration—I have referred to the mode in which they discharge their duties towards those in whose services they may be, and I would ask them to show an equal care and an equal anxiety in the discharge of their duties to themselves and to their families. In looking at the report I observe that there are seven of the members now receiving allowances for life from the Society; I see that one of them receives that allowance in consequence of age and inability; but I see this also, that six of them receive that allowance in consequence of a visitation from which not one of us is exempt. I ask, therefore, every man present in this room who is capable of being admitted a member of this Society, well to weigh and to consider that state of circumstances, and to answer to himself and to his conscience how he will bear the imputation that he has neglected the opportunity of providing for his wife and his family if such a calamity should befall him. Gentlemen, clerks owe not only a duty to themselves but a duty to their fellow labourers, and I observe with pleasure in this report the existence of a Casual Fund applied to the aid of clerks who may not be members of the Institution; I think it a most pious, a most beautiful, and a most religious provision; and I think that every well-disposed man will feel that, if his circumstances enable him to do so, it is a duty incumbent upon him to look not only to himself but to those who may be less able to provide for themselves. Gentlemen, I observe also in this report the formation of a library. We are living in an age of improvement, when every man must cultivate to the best those talents with which Providence may have endowed him: and if ever a time existed when it was necessary for clerks of solicitors to cultivate their legal knowledge, it is the present; for it is impossible for any man not to see that in the changes that are now going on—duties which heretofore have fallen upon the higher branches of the Profession must necessarily devolve upon the solicitors, and in their absence must devolve upon their clerks. I hope, therefore, that every encouragement will be given by all who are here present, to the extension of that library—I mean not to advocate the obtaining a room in which newspapers may be read—I

think it is not required—I shall be glad to see the means furnished to each one for study; but study is not to be had in a newspaper room. Gentlemen, let me now revert to what I said at the commencement that I would show to you—that the number of members of this institution was not sufficient, and that the funds of this society were not more than adequate. Now, if you have 570 members, looking at the number of solicitors in London, looking at the number of barristers, and looking at the necessarily number of clerks—why, surely the number of 570 is short by thousands of the number who ought to belong to this society. Every man placed in the position of discharging his duty to his wife and to his family is, in my humble judgment, bound to join this society. Looking, gentlemen, at the calamities which have befallen six of the members of the society—what would their position have been if they had not been members of that society, and what is their position now? If they had not been members of this society they must have been reduced to an absolute state of distress and penury. I find them now in the receipt for life of an income of about 30*l.* a year, capable of assisting them and their families. Now, gentlemen, I should observe, that you should not be misled by what I have said, and that you should not run away with the notion, that the existence of this sum of 18,000*l.* is a reason that this society does not require support and assistance, and I will therefore venture to refer to one passage in the report which has particularly struck my attention. It is this—"On the 20th of May last, the invested capital amounted to 18,168*l.* 19*s.* 2*d.*, and the importance of increasing these investments is the more apparent," when it is stated "that the interest of the last years' savings will not more than provide for the yearly allowance of one of the two members superannuated since the last anniversary." Now, I will venture to ask,—indeed I will venture to assume, that no man in this room would wish that the capital of this society should be touched for one single farthing; the income of it is the fund which ought to be looked to—and the income of it will, if duly supported, be sufficient to maintain it. I trust that every man present in this room who is capable of being a member of this society, and who has not already joined it, will do so; and that every man who has joined it will take the earliest opportunity of pressing upon his friends and connections the importance of their following his good example. This is the more important, gentlemen, for this reason. The society, as you are aware, has existed for 23 years—yearly members of the society must be increasing in age; none of us can endure the labour which falls upon us beyond a limited period; and we may expect that every year, instead of diminishing, the number of superannuated members will increase them. Gentlemen, with these observations I leave the case of this society in your hands; appealing, not to your passions, but to your judgment; hoping that every man will

enact himself to procure additional members of this society; believing that the society is working, and if duly supported will continue to work, great and permanent good; and for my part desiring most earnestly and most sincerely that it may continue to prosper. Gentlemen, I have no more to add, except to give you the toast—"Prosperity to the United Law Clerks' Society."

The Secretary read the list of subscriptions.

Mr. Rowdell Palmer, M.P., Q.C.:—My lords and gentlemen, the duty has been entrusted to me to propose to you the next toast which is usually given at these meetings. My lord, I think it a most becoming thing that those on whom it has pleased God to confer fortune and prosperity in our common Profession should be amongst the most forward to give the sanction both of their influence and of their names, and by their contributions, to the excellent work which this society undertakes. To you, my lord, and to those who surround you, it must be both a pleasure and a privilege to assemble on this occasion in the furtherance of such a work—not only on account of the pleasure which it must always give such men to join in any good work, but also on account of the sense which such meetings must bring home to all of us, of the common duties and common interests which unite us all, from the highest to the lowest, in this our common Profession. Of our duties I need not speak; they have been alluded to with sufficient force and fulness, and far better than any one who follows him can, hope to touch upon them, by the chairman. When I speak of our common interests, I do not use that word in any low or sordid sense; I do not refer to the interest which is connected simply with success in the world, but I refer to those mutual ties of assistance, dependance and support which we all owe to each other; for in this Profession there is no branch so high that it can say that any other branch is not necessary to the commonwealth; there is none so low which may not at once, as the reward of honest industry and strenuous exertions, look forward to the highest grade as the prize proposed to it; or, if not permitted by unfortunate or adverse circumstances to aspire so high, which may not with equal honour, though not, perhaps with equal worldly advantage, contemplate the unquestionable fact, that one end of the chain is as necessary as the other. I might apply, I think, without any impropriety, to the union which exists between the members of all grades of such a Profession, that touching description which we find in Holy Scripture, of the union between members of our common religious profession, "We are all members one of another; the eye cannot say to the hand, I have no need of thee; nor, again, the head to the feet, I have no need of thee." Even those members which in popular estimation may seem less honourable are, in truth, among the most honoured, because among the most necessary of all. That being so, I feel

that these distinguished persons whose names are enrolled as the patrons of this society do themselves honour whilst they do service to you in the task they have undertaken; and, therefore, it is most fit and proper that, whether they be present or absent, and some of them undoubtedly will always be present, the service which they render to us and the honour they do to themselves by giving the sanction of their influence and their reputation to this excellent undertaking should be always fitly acknowledged upon these occasions. Gentlemen, we have present several of the patrons of this society—your chairman, the Vice-Chancellor, near him, and the Lord Justice, on the chairman's right hand. In their presence it would ill become me, or any one, to speak of the example which they set to the Profession of which they are ornaments; the fewest words are the best so far as they are concerned. But I see, in the printed form which accompanies the list of toasts and songs that have been put into some of our hands, some other names selected, and, doubtless, fitly selected, as representatives of the whole body, because it has happened for them to attain the highest grade of our common Profession. I should be glad to be permitted to dwell for a very few moments upon those influential names as instances of what may be done, and of the manner in which it ought to be done, by those who wish to distinguish themselves in the Profession. I refer, my lord, to the Lord Chancellor, Lord Lyndhurst, and Lord Truro, three of the patrons of this society who have attained to the highest eminence in the law. The Lord Chancellor, a man now in power—although he is not present I would wish to speak of him in some degree with the same reserve as I would wish to address those present—and yet I may avail myself of the accident of his absence to say that perhaps we have never had in that high position a man who more conspicuously exhibits all the qualities which distinguish an amiable man and a true born English gentleman. As a lawyer it would be quite superfluous for me to speak of him at any length—I would say to the youngest here present, if they wish to rise as they may rise by sufficient industry, integrity, and that ability which God gives to all, in all grades, though not perhaps in equal proportions—if they wish to rise to that position, or the positions that are near it, let them imitate those qualities which adorn him. Then, gentlemen, the next name is the name of one who is in mature old age, having passed through the labours of the law and retired from the grave duties of the Profession; he is at once the ornament and boast of the most distinguished assembly which England possesses. He was not raised to that position by any signal advantages of birth or fortune; his father was a working man; he had to earn his bread from the beginning, as any one of you have to earn yours. That man, rising from the ranks of society, has not only placed himself on a level with the nobles of the land, but he is in the estimation of almost all of

them the noblest and most illustrious of the assembly which he adorns. The third I would mention with peculiar feeling, because that noble lord is now suffering from illness. I do not think a more remarkable man has ever adorned the judgment seat of this country. He was originally a clerk to his father, a solicitor, as the youngest here may be; he then became a solicitor, afterwards a barrister; and eventually he became Lord Chancellor of England. He is a man who in that struggle from the lowest to the highest grade of the Profession was tried by extraordinary and peculiar difficulties, who bore those difficulties from first to last with unflinching courage and fortitude; who overcame them all; and who, when he had attained the highest grade, showed that the cheerfulness, the amiability, the composure of his disposition had not been ruffled or disturbed in the least degree by the hardness of the struggle which he had undergone. He is an example which may be well set forth before you. We may truly say of his lordship, in the words of *Hamlet*, he is

"A man that fortune's buffets and rewards  
Has ta'en with equal thanks."

That he is a man to admire; that he is a man to hold up to the imitation of all who stand now in the position which he originally stood, and who may be told with truth, looking at his example, not only that the road is open to them to the highest position, but that there are no difficulties which can prevent a man who has energy, who has honesty, and who has ability and courage, from attaining the highest distinction. My Lord, I have only now to conclude by proposing that we drink the health of "The Lord Chancellor and other Patrons of this Society;" and I will venture to name as the representatives of those patrons now present, one whom we all most truly respect and admire, the Lord Justice Knight Bruce.

**The Lord Justice Knight Bruce:**—On the part of some better, and some at least as well entitled to acknowledge your kindness and that of my distinguished friend, as well as on my own, allow me to do so. Let me assure you that there are none more heartily well wishers to the institution, in honour of which we are here assembled, than those upon whom you have so kindly conferred this honour. There are among us here those who have duties more ostensible, more in advance, and more difficult than that of exhibiting practically their good will towards this association; but they are conscious that not one of their duties is of more substantial importance to society than that of endeavouring to encourage and foster an association, the object of which is to develop, to bring forth and to extend the exercises of the Christian virtues, by which I understand, as every man does, or ought to understand, the qualities which distinguish an honest man and a gentleman in a numerous and valuable class of society in whose well being, whose integrity and whose self-respect every

individual who has anything to lose, and therefore society at large, is most deeply interested—a class whose members are exposed to more than ordinary temptations—temptations which in a wonderful number of instances they resist in a manner that has never ceased to excite my admiration. Well may it be with this institution; may its reputation and its resources increase, and for ever flourish and improve.

**The Vice-Chancellor Sir Wm. Page Wood:**—My lords and gentlemen, I have been asked, somewhat unexpectedly I confess, seeing who are present in this company, to propose to you a toast which I nevertheless have as much pleasure in proposing as you will have in accepting, when I tell you that it is the health of our excellent Chairman. I scarcely know why it should have fallen to me to have proposed his health, unless it had been considered that those right honourable gentlemen, the members of her Majesty's Council, who sit with him at the Council Board, and his colleague who sits with him on the Bench of the Court of Chancery, may be thought too partial in their judgment, and that it may be supposed that I, whose judgment must always bend to their and his correction, am more fitted to call upon you to express the sentiments which I believe we may, one and all, without fear of a reversal, entertain towards him. Gentlemen, you have heard him instruct you to-day, not only in your duties towards this institution, the prosperity of which we have all met to promote, but in those higher duties which we all owe to our common Profession, and them whom assuredly no one is more fit or more able to lead you to the right path; realising that beautiful expression in one of our earliest poets, Chaucer, in which he says—

"The way of Christ and his apostles, twelve  
Himself he taught; but first He followed it Himself."

Gentlemen, knowing and feeling as we all do, that though the same abilities may not be given to all, with which it has pleased God to enrich our noble chairman, yet in those other qualities, namely, integrity and industry, it is given to all of you to imitate him, and you cannot follow a better example. I know that it is unpleasant to speak more at large—as I assure you no one in this company would be more willing to do than myself—on the merits of one who is present. I am glad to have the opportunity of following, however feebly, in the course he has pointed out, by saying how highly I esteem the value of our meetings upon these occasions, and of a common unity and harmony in all the branches of our Profession. With those who take a superficial view—and there are unfortunately many such at all times of life—of the business and conduct of life, the Profession to which I have the honour to belong has been considered as one favouring strife. My belief is that it is the great Profession of peace, and I think I may illustrate it by a common anecdote, possibly not a true one, of Peter the Great, when on his visit to

this county, having observed in dismay the number of lawyers in Westminster Hall, and of his telling her Majesty (Queen Anne, I believe) that he had only two in the whole empire of Russia, and that he intended to hang one of them when he got home. Now, I can only say that it is seriously my firm belief that if in any town of that great empire there could be assembled such a body of men as there are in this country, and as I see around me here, devoted to the administration of justice between man and man upon a liberal footing—upon the footing of right, and truth, and equity, without fear and without favour—if I could see upon the Bench in that country such men as we have seen on the Bench of our country—if Russia could boast of a Coke, of a Somers, or of a Hale, we should not at this moment be at war with that country. And with reference to what I have said of ours being the Profession of peace, how would the wrongs which many do really suffer from the injustice and violence of others be reduced if it were not for the law? It would only be by each man taking the law into his own hands. Further than that I may say that in the short time I have had the honour to be on the Bench I have seen many remarkable instances in which family strife and family division has been calmed by the judicious advice of honest legal advisers, who are free from those clouds which distemper the imagination of those mingled in conflict, by bringing them into a calm and dispassionate consideration of their individual positions. I no less honour those who take care in every instance, where there are fancied wrongs and fancied injuries which may be brought before their attention, to promote the peace and happiness of those who would otherwise be wrangling themselves by litigation. That has been done, I believe, by every branch of the Profession. There are many amongst the solicitors who would do so; there are many amongst the counsel who would do so; there have been many on the Bench at all times who have endeavoured to promote the best interests of mankind by taking this view; and when I look around for an example, for one who does the greatest honour to the Profession, and to each and every branch of it, I am sure I could point to no one who, when at the bar, was in the habit of giving more calm and temperate advice than your chairman, and who, while on the Bench, has given his decision with the view of bringing about a calm and temperate compromise of those quarrels which may have been brought before him. I beg leave to give you with the greatest sincerity, and with a feeling which will be responded to by all, the health of our most excellent chairman, Lord Justice Turner.

The *Chairman*.—My lords and gentlemen, it would be quite vain for me to pretend that this toast has come unexpectedly upon me, for the paper before me stares me in the face; but of this I can most truly assure you, that the hearty kindness in which it has been proposed, and the very flattering reception which has

been given to it, has come as a surprise upon me. I fear that the regard for me which I hope, and which I may say I flatter myself, that the Vice-Chancellor entertains—and I know nothing which can flatter any man equal to the hope of an enjoyment of his regard and his respect—I fear that the regard which he entertains for me may have misled him upon the present occasion. Gentlemen, I know nothing which would give me, and has given me, more pride and satisfaction than to enjoy the esteem and regard of Vice-Chancellor Wood; I have known him for years, and any one superior to him in his career in the Profession in which we have been commonly engaged I have never during my professional career seen or known. Gentlemen, for the compliment you have been kind enough to pay me I am heartily and sincerely obliged. I take, and I have taken, and I trust I shall continue to take a warm interest in the prosperity of this Society, believing it to be one which is calculated to be of great and lasting service, not only to those who receive directly its benefits, but to every member of the Profession in every station and every position.

Sir *John Patteson*.—The next toast has been intrusted to me because I am very sorry to say I am competent to propose it to you as I am not interested in the greater part of the toast. It is, "The Bench, the Bar, and the Profession." I was for 15 years below and at the Bar, and for some 22 years on the Bench, but now I am worn out and too old almost to be in the Profession. I love the Profession and will continue to do so as long as I live. I am so far interested in the toast that I hold myself to be one of the Profession because I love it and have been in it all my life. It is a noble Profession that of the Law, a noble one indeed, and the respect and deference which the people of this country have paid to the law have ever been spoken of as one of the features of this country which makes it different from other nations. For I do believe in my conscience that the uncorrupt integrity of the Bench, the honour and independence of the Bar and of the Solicitors and the Attorneys and their clerks, and the juries who have been brought in at different times to assist in the administration of the law have been in many instances in our history under God, the means of saving us from tyranny, anarchy, and confusion. Gentlemen, this toast mixes all branches of the Profession together as it ought to do, but not mixing them together in this country as in some countries, I think with great detriment to the administration of the law there—I mean that there are many countries in which the barrister and attorney are joined in the same list. In this country the Profession is subdivided, and the work of the one is entirely different from that of the other, and I believe that that subdivision has been the great means of our success. I should be sorry indeed to see that there should be any fusion, if I may so say, of those duties in this country. Amongst others included in the Profession,

there are not only the attorneys and solicitors, but their clerks. I have in the course of 22 years' experience conducted business at Chambers, and have often said and always will say it, that they have conducted their business before me admirably, and I do not believe that any other members of the Profession could have conducted the common and usual routine of the business there better than these men have done before me personally with so much satisfaction. Gentlemen, let us all join in all parts of the Profession to try to do in our respective stations all the honour we can to the Profession; and I am sure there is nothing by which we can do it greater honour than by supporting that part of the Profession who by accident or misfortune may have families which they cannot themselves support. It is a work in which we must all unite with pleasure, and in the pursuit of which we may imagine ourselves in that pleasant situation which the song about to follow describes:—

"Down in a flow'ry Vale."

**Mr. W. Murray.**—I could have wished that some member better known to the Profession than myself could have returned thanks, but in doing so I cannot help expressing with deep and sincere regret that the right honourable gentleman who proposed the toast should be in his present position. His retirement from the distinguished position he held for so many years, I am sure you will all concur with me, is a source of regret to every member present of the Bench, the Bar, and the Profession, and to you, gentlemen, who are the clerks of the solicitors of this metropolis. Gentlemen, you have been honoured with the most distinguished members of the Bench to-day, and you have heard their kindness of expression towards you. The Bar also have responded with kindness to those expressions of feeling, and it falls to me, a very humble individual in the lower branch of the Profession, to express to you how high an opinion I entertain of the integrity, the uprightness, and the honour of all those clerks with whom I have met. The members of the Profession, and of every part of it, are deeply indebted to them; and I do feel that all ought to assist in supporting this excellent institution. I hope that at your next anniversary you will find yourselves in a better position than you are in to-day, and that your income will be doubled. Believe me, that at all times it will be to me the greatest satisfaction to assist you to the utmost of my power. I thank you on the part of the Bench and the Bar, but especially on the part of my own branch of the Profession for the honour you have done us by the toast you have just drank.

**Mr. Shebbeare.**—The toast which I have the honour to propose to you is, that of the honorary stewards. There is a list of their names on the table, many of which names are the most conspicuous in the Profession, and have already been under the notice of this assembly. Let me say, on the part of all of them, that they will not be found to be mere

honorary stewards in the sense in which that term is regarded, for I am sure they have rendered individually the greatest services to the society. They have not only lent their names, and contributed to the funds of the society, but they have attended on various occasions at these meetings to render it assistance, both by the eloquence they have employed, and the advice they have from time to time given.

With regard to the society itself, there has been so much said in the course of the evening, that it would ill become me to enlarge upon the benefits the institution is calculated to confer upon society at large. But I may be allowed to advert to one thing, namely, that if this society existed for no other purpose than an annual assembly of all grades of the Profession, with a feeling of respect that they owe and ought to owe to each other, the society would not exist in vain. You have heard from the Vice-Chancellor Wood a sentiment which, according to my experience, is most fully justified—that this society, and the Profession in general, instead of inciting men to warfare is, in fact, a community of peace, and that the great object which they have is to promote peace among their clients. I may carry that sentiment one step further; I feel, also, that not only have solicitors as between their clients been the means of bringing about concord when otherwise, there would be long strife and litigation, but the clerks being more cool, and less interested than their employers, are often the means of bringing about an adjustment of differences which have existed between the solicitors engaged on different sides, and which have arisen from their over anxiety to promote the interests of their clients. I conceive there is no branch of the Profession which should be overlooked, and not be duly estimated when we look at the whole, and it is only by a wish to render mutual assistance to each other, that the interests of the whole can be promoted. With this view I offer you the toast which it is my duty to propose, namely, the health of the Honorary Stewards, coupled with the name of Master Turner.

**The Master Turner.**—I have the honour upon this occasion to be associated with many honourable gentlemen in the office of honorary stewards of this festival. Our duties so far as concerns the entertainment have been completely un-onerous, those duties having been performed by the acting stewards; but so far as the interests of this Society and the desire to promote those interests, and to extend the usefulness of the Society, are concerned, I think I may venture to say on the part of the honorary stewards that they have an earnest and anxious wish to do everything which rests within the limit of their power to extend the benefits and advantages arising, and which will continue to arise, from this admirable charity. Gentlemen, you heard that delightful singer, Miss Poole, in one of the songs she has sung to you, say that "Heaven shields every gallant who fights for the Crown." She might, perhaps, had she been at liberty to do so, have



gentlemen to say that Heaven's will, alas, every man who in his station discharges his duty. I know no duties more onerous or more irksome than those which have to be discharged by the individuals who are the immediate participants of the benefits of the Society for which we are assembled to-day. They have much stern, much rough, much unwelcome duty to perform; they meet with but little courtesy and civility frequently in the discharge of those duties; and I am always ready to admit that it requires great temper and discretion on their parts to discharge those duties advantageously. In the course of the duties which from day to day I am called on to perform, I see perhaps more of the law clerks than any of those higher individuals in the law who, for the benefit of this society, have come here to-day, are accustomed to do; and I have the utmost pleasure and gratification this evening to say, that with very few exceptions, it is impossible for any individuals to conduct themselves more properly than they do in the business which they have to transact. They display zeal for their employers; they manifest great industry; they frequently show great ability, and they are earnest and anxious in the discharge of their duties. I can assure you that, frequently when they leave my room, my heart bounds with a wish that I could better the situation in which they are placed. Sometimes, gentlemen, when I make inquiries of those who know them more intimately than I can profess to do, I have the gratification of hearing good tidings respecting them; as to some, I hear that they are rewarded with an adequate salary for their pains, as much as it is to be expected that any member of the law can afford to give them—for members of the law, be it always remembered, are not like merchants who make great gains all of a sudden—members of the law earn their income by hard labour, by industry and indefatigable perseverance. But, gentlemen, at other times when I make inquiries touching the position of the clerks, I have on two or three occasions heard that which has caused much gratification to my mind. I made inquiries respecting one individual who has been before me again and again, and whose conduct has always struck me as being that of a remarkably honest man, and I had the pleasure to hear that after a long service he was entitled to his employer, and that at the end of his articles he was to become his partner. Gentlemen, I have seen another individual here to-night who has often been before me in the discharge of his duty, and of whose character and conduct I have always entertained a high opinion; and he has told me that which I knew not before, that he was one of those who was instrumental in the foundation of this Society. I believe him, because I believe him to be a man who is capable of the wish and of the endeavour to carry out any advantage and any benefit to his fellow men. Gentlemen, on the part of the honorary stewards, I beg to express their earnest wish that this excellent Society may prosper and succeed, and be sup-

ported by all branches of this Profession; that many amongst the law clerks may rise to be employers, and may give a good example to others by showing that good conduct in this country is never displayed in vain.

Mr. Piggott:—I have now the honour to propose to you the health of three gentlemen, Mr. Bigg, Mr. Kinderley, and Mr. Willock, the trustees of your society, and to whom it is much indebted. The advantages and excellence of your society have been fully brought forth by those who have preceded me, but, gentlemen, you will recollect that a society of this kind cannot be carried on without officers. The most important certainly of those officers are the trustees, gentlemen who have not merely funds standing in their names, but who are constantly appealed to for, and they are always ready to give their advice as to the disposal of the funds. Those gentlemen have always been ready to come forward with their assistance, and I am sure they will continue to do so, and I have, therefore, much pleasure in calling upon you to join cordially in drinking the health of the "The Trustees."

Mr. Elderton:—The trustees not being here to respond for themselves, I am sure I am only expressing that it is their wish to increase the welfare of the society by every means in their power. Wishing every prosperity to the institution, I beg to return you thanks for those gentlemen, who unfortunately are not present to do so themselves.

The Chairman:—Before proposing to you the next, and I fear the last toast, upon the list, I have an announcement to make to you, which I am sure will not be less gratifying to you than it is to me; it is that my most excellent and highly valued friend, Mr. Roundell Palmer, has consented to take the Chair at our next anniversary. Gentlemen, we all know the labours to which my most excellent friend is liable in his profession, and it is on that account only that he is not present to state personally the readiness with which he takes that duty upon him. I have undertaken on his part to state that he will be most ready and willing to do so.

Gentlemen, we commenced the toasts of this evening by drinking the health of our Sovereign; since that time, gentlemen, we have dealt largely, and I hope satisfactorily, in sovereigns bearing her image and superscriptions. But, gentlemen, there is one class of sovereigns to whom we have as yet paid no attention whatever; but for myself, and I doubt not for every married man, I can say that there is a sovereign power presiding in the dwelling-house of each of us as perfectly irresistible, and as invaluable as that of her Majesty, who presides over these realms. We are all of us indebted to our wives for much of our progress in life; it is to their good advice, and to their judgment that we are all amenable; and I believe that no man can act more wisely than to act under their well-directed, and well-considered influence. We shall do, therefore, great injustice to them if we pass upon this

occasion without drinking their healths; I beg, therefore, to give you the Health of the Ladies.

The toast was heartily responded to, and the company retired.

### RETIREMENT OF MR. JUSTICE MAULE.

MR. JUSTICE MAULE, after 16 years' Judicial service, has intimated his wish to retire. He has long suffered from an ill state of health. He was called to the Bar by the Honourable Society of Lincoln's Inn, May 20th, 1814, and subsequently was made one of its Benchers. He went the Oxford and Western Circuits. He was selected by the Bank of England as one of their standing counsel,—several of whom, like himself, have been raised to the Bench. He was promoted to the rank of Queen's Counsel in Hilary vacation, 1834, and elevated to the Exchequer Bench in 1839, upon the death of Sir William Bolland, and was transferred to the Common Pleas in the Michaelmas Term of the same year, on the death of Sir John Vaughan, being succeeded in the Exchequer by Sir R. M. Rolfe, now Lord Chancellor Cranworth. The learned Judge has always been held in high esteem as an eminent lawyer, and distinguished for his learning and acuteness.

### NOTES OF THE WEEK.

#### THE NEW JUDGE.

It appears to be settled that James Shaw Willes, Esq., will be the new Judge: He was called to the Bar by the Honourable Society of the Inner Temple on June 12th, 1840, and went the Home Circuit. He was one of the Common Law Commissioners, and was actively engaged, not only in the examination of witnesses, and in the preparation of both the able Reports which have been presented to Parliament, but also in preparing the Common Law Procedure Acts of 1852 and 1854, which have effected so large a measure of beneficial reform.

It is remarkable that many of her Majesty's Counsel, several of whom are in Parliament, should have been passed over, and this eminent lawyer selected, who had not received the distinction of a silk gown. It is stated by the *Observer*, that he was greatly distinguished as a student at Trinity College, Dublin, and obtained the highest honours of his class.

This is an appointment somewhat resembling that of Mr. Justice Patterson, who was not a

leader at the Bar nor a member of Parliament. Some of the friends of the Profession think it an improvement that the Government should select the fittest man in their opinion for the important position of a Judge of the Superior Courts in whatever rank he may be at the Bar.

The *Freeman's Journal*, referring to the new appointment on the English Bench, says:—"Mr. Willes, who has the reputation of being one of the ablest and soundest lawyers of the English Bar, is son of the late Dr. Willes, of Cork. Mr. Willes will be the second Irishman who within the last few years has been elevated to the English Bench,—the other being Mr. Baron Martin."

#### INSOLVENT DEBTORS' COURT.

On July 3rd, Mr. Commissioner Murphy intimated that in future where a case was under 20*l.* in amount, he should not grant relief. In this determination he acted in accordance with the Chief Commissioner.

The learned Commissioner also expressed his intention to direct insolvents to be remanded when they had been engaged in bill transactions.

#### COUNTY COURT JUDGESHIP.

Charles Temple, Esq., another Queen's Counsel, has been selected by the Lord Chancellor to succeed to the County Court Judgeship, vacant by the death of J. W. Wing, Esq.

#### NEW QUEEN'S COUNSEL.

The following gentlemen have been called within the Bar:—

C. S. Whitmore, Esq., of the Oxford Circuit (called to the Bar 26th November, 1839).

W. Overend, Esq., (called to the Bar Nov. 21, 1837).

P. A. Pickering, Esq., (called to the Bar May, 4, 1838).

James P. Wilde, Esq., (called to the Bar Nov. 22, 1839, nephew of Lord Truro, and one of the Lecturers at the Incorporated Law Society).

These three Gentlemen are of the Northern Circuit.

William Bovill, Esq., of the Home Circuit (called to the Bar 15th January, 1841).

#### SHERIFFS OF LONDON AND MIDDLESEX.

Aldermen Kennedy and Rose have been elected Sheriffs for the ensuing year.

#### IN RE W. H. BARBER.

On June 30th last, Mr. Justice Coleridge said, "In the case of Mr. Barber, whose application to be admitted was made last term, the Court are not prepared to give judgment before the circuit. The case requires consideration as it is a very long one; it was brought before us so very late in the Term, that we have not had time to consider it."

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

*Minet v. Leman.* June 28, 29, 30, 1855.

GENERAL INCLOSURE ACT.—EXCHANGE OF LANDS.—DIFFERENT TENURE AND IN DIFFERENT COUNTIES.

Held, affirming the decision of the Master of the Rolls with costs, that the General Inclosure Act, 8 & 9 Vict. c. 118, s. 147, authorises the exchange of lands in one county for lands in another, and also of gavelkind tenure for land held in fee simple.

THIS was an appeal from the decision of the Master of the Rolls decreasing the specific performance of an agreement for the purchase of certain gavelkind lands in Kent. It appeared from one of the conditions of sale that a part of the land in question was in exchange for fee simple land in Middlesex under the order of the Inclosure Commissioners pursuant to the 8 & 9 Vict. c. 118. The defendant objected that the Commissioners had no power to exchange gavelkind for common socage land, nor where it was situate in different counties, but the Master of the Rolls overruled the objection and decreed a specific performance.

*R. Palmer*, and *G. Y. Robson* in support; *Elmsley* and *Pole*, contra.

The Lords Justices held, that the exchange was authorised by s. 147<sup>1</sup> of the Act, and confirmed the decree of the Master of the Rolls accordingly.

<sup>1</sup> Which enacts, that "it shall be lawful for the Commissioners, upon the application in writing of the persons interested according to the definition hereinbefore contained, in lands not subject to be inclosed under this Act, or in lands subject to be inclosed under this Act as to which no proceedings for inclosure shall be pending, and who shall desire to effect an exchange of lands in which they respectively shall be so interested, to direct inquiries whether such proposed exchange would be beneficial to the owners of such respective lands; and in case the Commissioners shall be of opinion that such exchange would be beneficial, and that the terms of the proposed exchange are just and reasonable, they shall, unless notice of dissent to the proposed exchange shall be given, under the provision hereinafter contained, cause to be framed and confirmed under the hands and seal of the Commissioners an order of exchange," &c., "and the land taken upon every such exchange shall be and enure to, for, and upon the same conditions, charges, and incumbrances as the lands given on such exchange would have stood limited or been subject to in case such order had not been made."

*Hope v. Liddell.* June 30, 1855.

SOLICITOR.—LIEN ON DEED FOR COSTS OF PREPARATION.—PRODUCTION ON SUBPENA.

A deed was prepared by C., a solicitor, for the Messrs. N., both of whom were since dead, and he refused to produce the deed on a subpoena duces tecum in a suit, claiming a lien thereon for his costs: Held, dismissing with costs an appeal from the Master of the Rolls ordering its production, that as the parties seeking such production did not attempt to disturb his possession, and were neither liable themselves nor the representatives of persons liable to pay the costs, in respect of which a lien was claimed, it was not protected from production.

THIS was an appeal from an order of the Master of the Rolls, directing the production by Mr. Clipperton, of an indenture which was executed by a Mr. Edward S. Norton. It appeared that the deed had been prepared by Mr. Clipperton, as solicitor for Mr. Norton and Mr. Benjamin Norton, and that on his being served with a subpoena duces tecum, he refused to produce the deed, claiming a lien thereon in respect of his costs, relating to its preparation from the Messrs. Norton, both of whom were since dead.

*Follett* and *Edmund James* in support; *R. Palmer* and *Amphlett*, contra.

The Lords Justices said, that as either of the Messrs. Norton, if alive, could have been compelled to produce the deed, Mr. Clipperton was bound to do so. No attempt was made by the parties to this suit to take the deed out of his possession, and they were neither persons nor the representatives of persons liable to pay the costs in respect of which the solicitor claimed a lien, and he could not therefore protect himself from its production. The appeal would be dismissed with costs.

## Master of the Rolls.

*Courtier v. Cram.* July 2, 1855.

WILL.—CONSTRUCTION.—GIFT VOID FOR REMOTENESS.—THELLUSSON ACT.

The testator by his will devised his estate among his children in certain proportions, and directed that the share of any dying should be divided among the children of the one so dying, and in case of the death of any of the grandchildren the share to be divided amongst the remaining grandchildren: Held, that the gift over on the death of one grandchild to the others was void under the Thellusson Act, 39 & 40 Geo. 3, c. 98.

THE testator, William Anderson, by his will devised his estate among his children in the proportions therein mentioned, and he directed that the share of any of his children who might

die should be divided amongst the children of the child so dying, and that in case of any of his (the testator's) grandchildren dying the share of such grandchild should be divided amongst the remaining grandchildren.

The *Master of the Rolls* said, that as the gift over on the death of a grandchild to the others, was a gift to a class to be ascertained at a period which might be more than 21 years after the testator's death, it was void for remoteness under the 39 & 40 Geo. 3, c. 98, and there being no absolute, but only a qualified interest given to the grandchildren, the former gifts were not divested by reason of the latter gift which did not take effect.

#### Vice-Chancellor Kindersley.

*Barrett v. White.* June 28; July 2, 1855.

WILL.—CONSTRUCTION.—RESIDUARY BEQUEST.—“MONEY.”

*A testatrix, after directing the payment of her debts and funeral expenses and legacies and provision made for the annuities thereby given, left “whatever money remains” to her great nieces as therein mentioned. She then made several specific bequests, and thus concluded:—“If I have omitted anything, I leave it to my sisters.” Held, that the word “money” was not confined to its limited sense, but included all the funds out of which the previous payments were directed to be made, and that the nieces, and not the sisters, were entitled to the residue.*

THE testatrix, by her will, after directing her debts and funeral expenses and legacies to be paid and a sum to be placed in the name of her two trustees to answer for the annuities thereby given, left *whatever money remains* or whatever money she should be entitled to or have left her to her two great nieces in the proportions therein mentioned,—the interest to be paid to them, but not the principal until they attained their 21st year. The testatrix then directed that in case of the death of either of her sisters, the annuity should go to the survivor, and at the death of both to her two great nieces, and after making several specific bequests of china and wearing apparel, she concluded as follows:—“If I have omitted anything, I leave it to my sisters,” &c. The question was now raised whether this clause was a residuary bequest to the sisters, or whether the two grand nieces were not entitled under the previous clause.

*Solicitor-General* and *G. W. Collins* for the plaintiff; *Teed, Baily, Glasse, Dickinson, Evans, and C. Parke*, for the several other parties.

The *Vice-Chancellor* said, that it was clear the testatrix by the words “whatever money remains,” referred to whatever remained after the preceding payments. It appeared there was insufficient money to provide for the annuities, and it became necessary for that purpose to sell personal property belonging to her. It could not be supposed she intended always to keep on hand as much money as would suffice for the establishment of the annuities,

but that she meant her executors to resort to her personal property to supply the deficiency. She must therefore have considered there might be more than mere money in its limited sense, and the word must be taken to include all the funds out of which the previous payments were directed to be made. And it was evident that she simply meant anything in the nature of domestic articles which she had omitted to name should be given to her sisters. The great nieces were therefore entitled to the residue.

#### Vice-Chancellor Stuart.

*Marshall v. Scales.* June 1, 1855.

WILL.—CONSTRUCTION.—DESCENDANTS OF UNCLE'S CHILDREN.

*The testatrix by her will, gave to such of the children of her uncle as should be living at her death, and the “descendants” of such of them as might be then dead, per stirpes, a sum of money in equal shares: Held, that descendants of the children of every degree were entitled.*

THE testatrix by her will, gave to such of the children of her late uncle as should be living at her death, and the descendants of such of them as might be then dead, *per stirpes*, a sum of money in equal shares. A question was now raised as to whether the gift extended to descendants of every degree.

*Coles* for the testatrix; *Malins* for a grandchild; *Parsons* for other descendants.

The *Vice-Chancellor* said, that the children's descendants of every degree were entitled.

#### Vice-Chancellor Stuart.

*Dunn v. Bownas.* June 30, 1855.

CHARITABLE BEQUEST.—VOID UNDER MORTMAIN ACT.

*A testator bequeathed a sum of money to the Corporation of Newcastle in trust for the purpose of establishing a hospital for 12 poor widows with a monthly allowance to each—the surplus to be applied in providing them with coals and clothing annually, or any other necessary they might require: Held, that as the testator had not pointed out any land already in mortmain, and the gift involved the purchase of land for the proposed hospital, it was void under the 9 Geo. 2, c. 36.*

THE testator, James Archbold, by his will gave and bequeathed to the Mayor and Corporation of Newcastle-upon-Tyne 4,500*l.* in trust for the purpose of establishing a hospital for 12 poor widows with a monthly allowance of 20*s.* to each,—the surplus to be applied in providing them with coals and clothing annually, or with any other necessary they might require. The question was now raised whether the gift was void under the 9 Geo. 2, c. 36.

*W. M. James* and *Bates* for the executors; *Rolt* and *Smythe* for the residuary legatees; *Headlam* and *Cairns* for the corporation;

*Witnesses for the Attorney-General; Faber and Hughes for other parties.*

The Vice-Chancellor said, that as it was clear no material building must be provided for the inmates of the hospital which involved the possession of land and buildings, and the testator had not pointed to land already in mortmain, the bequest was void under the Statute.

#### Court of Common Pleas.

*Barwick v. Baba and another.* June 7, 1865.

COMMISSION TO EXAMINE WITNESSES IN ENEMY'S COUNTRY.

*A rule nisi on behalf of the defendants for the issue of a commission to examine one of the defendants and another party resident at Odessa, in Russia, in an action on a charter-party, was discharged.*

This was a rule nisi on behalf of the defendants for the issue of a commission to examine one of the defendants and another party, who were resident at Odessa in Russia, in this action on a charter-party.

*Leach* showed cause against the rule which was supported by *Bovill*.

The Court said, there was no authority for the issue of a commission into an enemy's country to examine witnesses, and the rule would therefore be discharged.

#### Court of Exchequer.

*Hodges v. Ankrum.* June 7, 1865.

COMMON LAW PROCEDURE ACT, 1854.—SUMMING UP EVIDENCE.—NONSUIT.—BILL OF EXCEPTIONS.

*On the conclusion of the plaintiff's case at the trial of an action, the presiding Judge held there was no evidence, and directed a nonsuit, and refused to allow the plaintiff's counsel to sum up the evidence under the 17 & 18 Vict. c. 125, s. 18: Such ruling was affirmed, and held that a bill of exceptions should have been tendered.*

This was a motion for a rule nisi to set aside the nonsuit, which passed on the trial of this action under the direction of Parke, B. It appeared that on the conclusion of the plaintiff's case, the learned Baron decided there was no evidence, and refused to allow his counsel to sum up the evidence to present to the jury.

*E. James* in support referred to the 17 & 18 Vict. c. 125, s. 18, which enacts, that "upon the trial of any cause the addresses to the jury shall be regulated as follows:—The party who begins, or his counsel, shall be allowed, in the event of his opponent not announcing at the close of the case of the party who begins his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence (if any); and the right to reply shall be the same as at present."

The Court (per Pollock, L. C. B., and Parke and Martin, BB., dissentiente Platt, B.) said, that the Act only applied where there was evidence to be left to the jury, and that the question whether there was such or not was for the Judge, and the appeal from his ruling was by bill of exceptions. The rule would therefore be refused.

*Tetley v. Suran.* June 12, 1865.

RULE NISI FOR ATTACHMENT.—RETURNABLE AT CHAMBERS IN VACATION.

*The Court refused to make returnable at Chambers a rule nisi on the last day of Term, for the issue of an attachment for contempt for non-obedience to an award, where the parties did not consent.*

This was a motion for a rule nisi for the issue of an attachment for contempt for non-obedience to an award.

*Hodgson* in support, asked for the rule to be made returnable at Chambers, this being the last day of Term.

The Court, however, said, that as a Judge at Chambers had not original jurisdiction in the matter, the rule could not be made returnable there, unless by consent.

*Warrington v. Leek.* June 12, 1865.

COMMON LAW PROCEDURE ACT, 1852.—SETTING ASIDE JUDGMENT BY DEFAULT.—AFFIDAVIT OF MERITS.

*Held, that the affidavit in support of an application under the 15 & 16 Vict. c. 76, s. 27, to set aside judgment by default, and for leave to the defendant to come in and plead, need only allege that he has a good defence, without stating the grounds of defence.*

This was a rule nisi to set aside the order of Parke, B., at Chambers, setting aside the judgment by default which had been signed herein, and letting in the defendant to plead, upon an affidavit alleging that he was informed and believed he had a good defence on the merits.

*Bramwell* and *Archibald* showed cause against the rule.

*Willes*, in support, cited the 15 & 16 Vict. c. 76, s. 27, which enacts, that "in case of non-appearance by the defendant, where the writ of summons is indorsed in the special form hereinbefore provided," it shall be lawful for the plaintiff "to sign final judgment," &c., "provided always that it shall be lawful for the Court or a Judge, either before or after final judgment, to let in the defendant to defend upon an application, supported by satisfactory affidavits accounting for the non-appearance, and disclosing a defence upon the merits."

The Court (per Pollock, L. C. B., and Parke and Platt, B.B.; dissentiente Martin, B.) said, all that was required was that the defendant should satisfactorily account for his non-appearance, and make the ordinary affidavit of merits without stating the grounds of defence, and the rule was therefore discharged.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“BANK attending at your service.”—*Shakespeare*

SATURDAY, JULY 14, 1855.

### LIMITED LIABILITY.

#### PARLIAMENTARY CONFLICT OF VIEWS ON THE RIGHT WAY TO ESTABLISH THIS LAW.

SOME little time since we drew attention to the question of what ought to be the frame of a law establishing a right in a secret partner of participating in profits without being liable to the debts of the concern. We showed the folly of the principle enunciated in *Waugh v. Carver*, which makes a man, whom a creditor not only never trusted, but never heard of, liable in his own person and in *solidum*, to pay such creditor, merely because he had taken a share of the profits in return for the money he had advanced into the concern, instead of taking interest at, perhaps, some exorbitant rate. Our short prescription for the projected new law was, “Repeal *Waugh v. Carver*, and leave the rest to Nature.” We especially protested against any registration of loans on limited liability being required, on the ground that such registration would never be regularly done, and that it would, moreover, be utterly useless, and would induce advancers to be usurious capital lenders, instead of guarantees to the creditors.<sup>1</sup>

<sup>1</sup> Since the above lines were written we have seen this whole argument most conclusively stated by Mr. Commissioner Fane, in a paper of eight pages, with such singular clearness and felicity of language, as to make his essay in our view a model of juridical exposition. Had our columns not been needed for the particular subject proposed at the head of this article, we should gladly have availed ourselves of this opportunity to lay large extracts of the learned Commissioner's statement before our readers. The paper is entitled “Limited Liability; its necessity as a means of Promoting Enterprise.”

These views excited the attention of the Law Amendment Society, and were more fully brought out in a paper read before that body. The subject was discussed, in all its bearings, by the society, on no less than five evenings—an opinion which had been embodied in resolutions and almost adopted by the society, and which approved of a scheme of registration of limited partners, was in consequence of such prolonged discussion abandoned by the society, and the following resolutions were passed:—

“GENERAL MEETING, MAY, 7, 1855.

“Mr. Commissioner Fane in the Chair.

“The following gentlemen, with power to add to their number, were appointed a committee to wait on the Vice-President of the Board of Trade, to urge upon him the importance of excluding all provision for compulsory registration from the Bill now understood to be in preparation by Government relative to Limited Liability in Partnership:—

“Mr. Commissioner Fane, Mr. Field, Mr. Couch, Mr. F. Hill, Mr. Hastings, Mr. Anstey, and Mr. Lowe, M.P.

The following resolutions on the Law of Partnership were adopted:—

“1. ‘No person ought, by reason only of his being entitled to share in the profits of any business, to be liable to pay the debts or perform the contracts or engagements incurred or made or entered into by the persons by whom the same is carried on.’

“2. ‘The persons by whom the business is carried on, or who suffer their names to be used, or themselves to be held out to the world, as partners, ought alone to be liable for the debts, contracts, or engagements of the business.’

“3. ‘A person ought to be allowed to become entitled to a share of the profits with a limited liability to the losses of a business; and such person should not as against the creditors of the business have any title to the

property or assets thereof, and should be compellable to contribute the share of capital he may have agreed to provide.'

"4. 'Any person carrying on a business, who knowingly or wilfully makes any false representation as to the liability of any person as a partner therein or otherwise, to contribute to the capital or expenses thereof, and thereby obtains money, goods, or credit, should be guilty of a misdemeanor.'

"5. 'Any partnership should be capable of suing and being sued in the name of the firm or description used by the partnership at the time of the right of action accruing; and service of process at the place or any place of business of the partnership should be deemed good service.'"

Since the discussion at the Law Amendment Society, the Government have brought in two Bills to establish a system of limited partnership, and have materially improved them by amendment in committee, adopting to a considerable extent the views which we believe we were the first to bring before the public. The changes of opinion in the framers of the Government measures, and the curious diversity of view among the different members of the Houses of Parliament, indicated in the debate on the second reading of the Bills on the 29th of June, make us revert to the subject.

First, as to the Bill relating to common partnerships. The second clause, as amended, would, if it stood alone, very nearly effect the required object. It authorises loans for a share of the profits without liability to the debts. By a subsequent clause servants and others are allowed to take a share of the profits in return for their services, without liability for the debts. This frame of law would probably fail to meet every case which might arise, and is undoubtedly more clumsy than the one formerly suggested by ourselves, and matured and embodied in the resolutions of the Law Amendment Society. Were it not, however, for the provisions as to registry contained in the Bill, we should have highly approved of the measure; but our objection to any such provisions has been only strengthened by all that we have heard since writing our former Articles. With deference to those who propose it, it seems to us purely childish to require loans to be registered merely because they are made for an *indefinite* rate of interest, while all ordinary loans for the same purpose are still to be allowed to be made without registration if they are made for a *definite* rate of interest. This registration also seems to us, not only childish, but seriously mischievous, when we further

consider that loans *for a share of profits*, on which alone this fetter of registration is to be fixed, are loans that not only do not come into competition with trade creditors on failure, but go to swell the assets applicable to them: while loans for the same purpose, if made at any fixed rate of interest, however exorbitant, are allowed to go unfettered, although they rank in competition with trade creditors on failure, and are in diminution of their assets. The registration of the secret partner's loan can *have no possible value except as between the partners themselves*, and for that object the books and papers of the concern are the only right place for its registration; while, on the other hand, to register a loan of capital made at interest would have to the trade creditors the same kind of value as a registration of bills of sale under the late Act.

It would appear, however, from the debates as if some expiatory ceremony of registration for limited liability loans must be gone through by way of tranquillising the ghost of *Wagh v. Carver*, now about to be dismissed to the shades. It does not appear to us that there is any one person, in Parliament or out, who truly desires to establish limited liability, and yet who seriously believes that any good would come from such a registration. We have heard no argument in favour of registration, which, *were it true*, would not be condemnatory of the principle of limited liability altogether; but, nevertheless, it is pretty evident that the thing must be. The cry "*Register! Register! Register!*" though in this burlesque form, and addressed to this nonsensical purpose, is still, it would seem, to echo in the House; and we therefore address ourselves to the question, in what form can we have this imperative registry so as to do the least mischief?

The Bill, as originally prepared, visited erroneous registration with the penalty of unlimited liability. We would rather have seen the Bill thrown out than have had it pass in that shape. As now amended, the penalty is, the loss of the loan. This penalty is one which could operate only in favour of the borrower. As against the creditor, the loan is, *per formam mutui*, always lost,—its one elemental condition is, that it is to be paid only out of what may remain after the creditors are satisfied. Now, any error in the registry will in reality always be the error, *not of the lender*, but of the borrower. Every variation in the loan, every five pounds further advanced, every bit of profit allowed to remain in and be capitalised, makes a new loan of the en-

tire capital,—so says the Bill, clause IV. Practically, these changes must be of almost daily occurrence, and the only man who could register them is the man who keeps the books of the concern wherein of course they are recorded; but this man is the borrower, and the Bill would make him into the very person who alone in all the world should be interested that there should be an error in the registry it designs to establish. The lender having trusted him, like the lord in the parable, with his one talent to trade with, of course also trusts him to do all that is requisite in the way of compliance with legal form. The borrower, if he be a knave, will be able under sanction of this law to do much better for himself than to bury the talent in a napkin. By a slight omission in the register, he will keep it irrecoverably as his own. The lender, perhaps, is his old master or partner now retired from business. The borrower keeps everything straight enough till, may be, he finds his benefactor fast declining towards the grave; he then takes care that some error should occur; and after the old man's death, when he has no longer any more good to get from that source, he coolly tells the widow and children that the capital in the trade which they had conceived to be theirs, has by means of some utterly unimportant error (and we defy any one to show that any error whatever in such a register could be otherwise than utterly unimportant and inconsequential) become by force of Board of Trade law transferred to, and is the sole property of him the real delinquent.

Moreover, all loans for a share of the profits are to be registered in Serjeant's Inn, Fleet Street.—Fifty pounds worth of goods left in the little huckster's shop near Land's End by the old father when his son took the business, must be registered in the to them *terra incognita* of Serjeant's Inn, Fleet Street, or else when the old man dies intestate this fifty pounds will be kept by the borrower, and not brought into hotch-pot.

These considerations will surely suffice to get the cruel penalty of clause IV. expunged from the Bill. If, to satisfy parliamentary cravings, there must be some registry, the duty of keeping it accurate must surely be thrown upon the borrower, and the penalty must be apportioned to the value of the accuracy sought for (which we place at "nil,")—say five per cent. on the amount of the loan—such penalty being payable to the Crown; and it surely ought not

to be extended to little loans for small retail businesses and the like. Everybody must know that such loans as these will, in fact, not be registered, whatever the law: and the first rule of law-making is, never to make a law, even if it were abstractedly wise, when you know it will not be obeyed.

As to the other Government Bill,—the one for the application of limited liability to joint-stock companies,—a remarkable opposition is threatened:—Mr. Cairns proposes to omit the entire Bill, except the title and the two formal clauses at the end, and to substitute in effect another Bill of his own. The main feature of Mr. Cairns' measure is, to make every limited joint-stock company into a corporation, instead of one of the "*tertium quid*," mongrel creatures begotten by the present Joint-Stock Acts. This unquestionably is the true principle to frame the law on; and we trust that the Government will adopt it. Make the concern a corporation, and you at once give absolute notice of the limited character of the concern, and invite caution. Give a firm the name of Able Smith & Co., and the creditor may be deceived into thinking it something else perhaps *idem sonans*. But the "Imperial Smoke Company" is a corporate firm, the very sound of the name of which makes a man look about him.

"As a general rule" (says Commissioner Fane), "either no credit should be given to a company, or credit for the shortest period, because the very theory of a joint-stock company is plenty of ready money."

This sentence goes deep into the truth of the subject. So far as credit is given to the mere *shareholders' list*, it is a public curse. The millennium for joint-stock companies will begin when their whole public credit depends on their *conduct* of business *alone*. The desideratum is to *destroy* all money credit so far as it can exist independent of conduct. But Mr. Cairns, so clear and right in all his other proposals, has unfortunately fallen, on this point, into Mr. Cardwell's views of thinking that Parliament should on this point regulate the internal affairs of a company, and that if failure comes the *law* should provide for the creditors a guarantee that there should be assets forthcoming. He accordingly adopts Mr. Cardwell's proposal, that on failure every shareholder who has not sold out of the concern, shall be liable to pay his capital up over again. In Mr. Cardwell we are not surprised at this idea. Last Session he was a vehement opposer of limited liability altogether, and was defeated, and his



speak this Session was to us eminently satisfactory as a true exposition of the matter. It was eminently an "in for a penny in for a pound" argument:—"You have some limited charters, and there must be no favouritism and so we must have a general limited law" is its sole idea; and then he argues breast high for registry and the like, though he admits the accounts will never be truly discoverable even by compulsory audit. Mr. Cairns should have hesitated before associating himself with any views of which these were part. And the idea of a double capital legislatively provided is, in its essence, fatal to the philosophy, evidently a free-trade one, on which limited liability depends. But Mr. Cairns' resolutions show such clear thought on most of the subject that we are surprised at his being misled by Mr. Cardwell. If we are to pay a price for the new law and have some alloy mixed with the pure gold, perhaps there is no price less onerous than this double capital plan—no alloy less destructive; but it is an alloy, and foreign to the essence of the proposed law. This essence is, that *as regards the creditor*, the law has nothing whatever to do but to secure knowledge that there is limitation. And Mr. Cairns, in conformity with this governing theory, would, with us, strike out the provisions as to registry, *nor does he propose this double capital liability in ordinary partnerships*; and yet when he comes to the case of a joint-stock company he forgets this cardinal point of his compass and veers right round in his course. A Joint-Stock Act should be nothing but statutory articles of partnership—convenient to be by Statute because of the number of parties,—and as to them permissive and declaratory, where there is no contrary provision, but not obligatory. Now, those well-acquainted with the state of any joint-stock company's affairs on its stoppage know that the one thing above all to be provided against *inter se*, is the *knowing* and delinquent partners slipping out of the concern and selling their shares to men of straw just before the stoppage. The one great knavery on failure lies on this point of the joint-stock constitution. Mr. Cardwell seems to think the three years' provision, which imposes on such vendors a secondary liability to creditors if *all the continuing shareholders fail*, is a security on this point. But, *inter se*, it is none, nor does it profess to be any. Practically, it has turned out no security to creditors either. The security really wanted is not to creditors, but *inter se*; and a provision

in the nature of a bye-law, that every vendor of a share in a joint-stock company should, be liable to his late co-partners by way of guarantee for the performance by his vendee of all partnership liabilities for three years or a shorter period, would be a most valuable and legitimate provision. The other provision of double capital liability, is mischievous on every account. It leads the creditor to rely on something else in a joint-stock company besides the right conduct of their business:—that again leads the managers of the company to conduct their business *less rightly*. The very mischief deprecated by the opponents of a limited law arises from this unwise provision. What is really wanted for the public interest is, to *minimise* the company's *brute* or money credit. This is a most material consideration, and we maintain that it is a *public advantage* and a *public security* that when those they have supported by trading with them fail, creditors should suffer loss: or rather we should say that they should run a known and near risk of suffering loss on the failure of any debtor particularly if it be a joint-stock company. Every trade creditor is in truth a partner in that part of the debtors' trade out of which the debt arises. Without his co-operation,—without a marriage between his facilities for the particular transaction (capital or labour or both) and those of the debtor, the particular adventure would never have been born; and the jeopardy of this connection it is which clears the commercial atmosphere and alone makes it fit for a fair and honourable race to breathe. The creditor is the real commercial policeman. His intimate control over the debtor as to all his transactions and the intimate knowledge of the debtor's affairs he will insist on having, if not bolstered up into a false position by silly laws, are the safeguards for all our public commercial morals. It is of the first value to have this control as near and intimate as possible; and to interpose a double capital clause is seriously to impair it. This part of the subject, we think, has as yet been quite overlooked. Some people say that the landlords make the laws in this nation; our complaint is, that the *creditors* make them. Nobody can take such good care of himself, without any special money protection, as a creditor; and it is of the first moment to us all that he should be left to do so.

So much as to the *detracting* and *relish* effect of such a double capital law on the company's character and conduct, and as to its tendency to produce gambling speculation

in the particular case, and general detriment to the trade character of the nation. Such a double capital provision would also internally damage the working of the very principle of limited liability;—would prevent the families of shareholders from keeping their ancestor's capital in the same concern;—would prevent advances by poor men into the concern;—would make it dangerous for rich men to associate with poor ones who might not prove able to pay any of their second capital, so that the rich one will have more of his to pay than otherwise. Absolute certainty that when I have put in so much I shall have to risk no more is the one thing necessary to success of the principle of limited liability. Mr. Cairns sees this as to private partnerships:—whence then the fog which seems to gather round his joint-stock company prospect? The same shifting of the compass seems to have led Mr. Cairns to propose that when a joint-stock company fails its affairs should be wound up *in the interest of the creditors* in Chancery instead of Bankruptcy. Now, while the Bankruptcy Court is not fitted to deal with the affairs of partners *inter se*, even for raising the debts in full by internal contribution, neither is the Chancery Court fit to take proof of debts, get in assets, and so on. We believe that the mere proof of debts and receipt of dividends by creditors in Hammersley's Chancery administration suit has by this cost them and the estate at least 10,000*l.*, perhaps twice as much. Not let us keep our present system of legal procedure as far as we can, and send the failed company into bankruptcy till the creditors are paid;—if the shareholders are still under liability to pay up capital to an extent beyond what will pay the creditors in full, they will take care it never goes to bankruptcy. If they are not liable to such an extent, it ought to go there, or else all the present bankruptcy business should be transferred into Chancery. But let us hear what Commissioner Fane says:—

"If any creditor is not paid in due course, he ought to have facilities given him for asserting his rights *against the company*, though none for asserting his rights *against any individual*. He trusted the company and should sue the company, and not any individual. If he obtained judgment and the company did not pay, he should proceed against the company under the ordinary Bankrupt Law. Under that law the property and documents of the company would be seized; their debts ascertained; their assets, including what was due from subscribing capitalists, collected; and distribution made; and the ultimate result would be that those who had an capitalistic

trusted the managers with money or capital, and those who had as creditors trusted them with goods or money, would each incur moderate loss, the extent of which each would know, and would each return to the pursuits of industry with a warning against imprudent trust in future."

These remarks on the conflict of opinion between the pro-limitationists will show that Mr. Lowe's speech on the second reading of the Bill was truly justified. We take it from *The Times* of 30th June:—

"Mr. Lowe said, that although this question had reached its 21st year, he saw many symptoms which showed that it was still in its infancy, and the proof of this was that no honourable gentleman who had yet addressed the House had ventured to follow out his own principles to their logical conclusion. This was a symptom with which we were familiar in all cases. People took a principle the abstract truth of which they adopted, but shrank from the application of that principle, introduced all manner of exceptions, and cut it down until you could not tell whether they most trusted or distrusted it. As an instance of this, he might refer to the speech of an honourable gentleman (Mr. Cardwell) who in the beginning was very strong in favour of limited liability, but at the conclusion was equally strong against it, so that you could hardly tell on which side the honourable gentleman argued with greater cogency. Now he (Mr. Lowe) differed in opinion from every hon. gentleman who had addressed the House, but, though he thus differed from them he should not have to seek for a single new argument in support of his views. He would cull them all from the speeches of those who sat around him."

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### INCOME TAX.

18 VICT. c. 20.

Additional rate of 2*d.* in the pound to be charged from 5th April, 1855, in respect of all property, profits and gains; s. 1.

All relief, abatement, and deduction to be proportionate to the increased rate of duty granted by this Act; *Proviso* as to income under 150*l.*; s. 2.

The duty hereby granted to be assessed and raised under the provisions of recited Acts; s. 3.

Duties to continue during the war, and until the first April next after the expiration of a year; but if before April 6, 1860, the rates of 16 & 17 Vict. c. 34, to revive; s. 4.

Continuance of Act for recovery of arrears of duty, &c.; s. 5.

The following are the Title and Sections of the Act:—

An Act for granting to her Majesty an increased Rate of Duty on Profits arising from Property, Professions, Trades and Offices.  
[25th May, 1855.]

Most Gracious Sovereign,

We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the supplies to defray the expenses of the just and necessary war in which your Majesty is engaged, have freely and voluntarily resolved to give and grant unto your Majesty the rate and duty hereinafter mentioned; and do therefore most humbly beseech your Majesty that it may be enacted; and be it enacted, as follows:—

1. From and after the 5th day of April, 1855, there shall be charged, raised, levied, collected, and paid yearly unto and for the use of her Majesty, her heirs, and successors, in addition to the rates and duties chargeable under the Act passed in the last Session of Parliament, chapter 24, for and in respect of all property, profits, and gains chargeable under the several Acts in force relating to the Income Tax, either by assessment or under any contract of composition or otherwise, the additional rate of 2*d.* for every 20*s.* of the annual value or amount of all such property, profits, and gains respectively.

2. Provided always, that where under the said several Acts in force any less rate or duty than 1*s.* 2*d.* for every 20*s.* of the annual value or amount of any property, profits, or gains is now chargeable, or any relief, or abatement, or deduction is directed to be given, made, or allowed after any rate in such Act or Acts specified, then and in every such case such rate of duty, relief, abatement, and deduction to be charged, given, made, and allowed respectively under this Act and the several Acts aforesaid shall bear the same proportion to 1*s.* 4*d.* for every 20*s.* as the rate of duty, relief, abatement, and deduction respectively, now chargeable or directed to be given, made, or allowed as aforesaid, in the like cases respectively bears to 1*s.* 2*d.* for every 20*s.*: Provided, nevertheless, that any person entitled to relief under the said Acts and this Act, on the ground that his total income, although amounting to 100*l.* or upwards, is less than 150*l.* a year, shall be relieved from so much of the duties assessed upon or paid by him under or by virtue of the said several Acts and this Act as shall exceed the rate of 11*½d.* for every 20*s.* of his profits or gains.

3. The said duty hereby granted shall be assessed, raised, levied, and collected under the regulations and provisions of the several Acts now in force relating to the Income Tax; and all powers, authorities, rules, regulations, directions, penalties, clauses, matters, and things contained in or enacted by the said several Acts, and in force with respect to the duties granted by the said first-mentioned Act, shall

(so far as the same are or may be applicable consistently with the express provisions of this Act) respectively be duly observed, applied, and put in execution for assessing, raising, levying, collecting, receiving, accounting for, and securing the said duty hereby granted, and otherwise relating thereto, as if the same were particularly repeated and re-enacted, *mutatis mutandis*, in the body of this Act, with reference to the said rate and duty hereby granted.

4. The duties by this Act and the said Act of the last Session of Parliament respectively granted shall continue in force during the present war and until the 6th day of April which shall first happen after the expiration of one year from the ratification of a definitive treaty of peace, and no longer: Provided always, that if the period limited by this Act for the continuance of the said duties shall expire before the 6th day of April 1860, then, on and from and after the expiration of the said period, the several rates and duties granted by the Act passed in the 16 & 17 Vict. c. 34, shall revive, and be payable during so much of the respective terms limited by the said last-mentioned Act as shall be then unexpired.

5. Provided always, That the said rates and duties shall not cease at the time hereinbefore appointed in that behalf with respect to any assessment which ought before then to have been made, but which shall not have been made and completed, nor with respect to any duty which shall have been assessed and shall then remain unpaid, nor with respect to any penalty before then incurred, nor with respect to any deduction of the said duty or any portion thereof authorised by law to be made out of any rent, interest, or other annual payment, nor with respect to any penalty for refusing to allow any such deduction, although such refusal may be after the time appointed as aforesaid, nor with respect to the assessment of the interest on Exchequer bills becoming due in the month of June next after the time appointed for the ceasing of the said duty, but all the powers and provisions of this Act, and of the several Acts herein-mentioned or referred to, shall continue in force for making and completing all such assessments as aforesaid, and for levying and recovering the duties so assessed or to be assessed, and all arrears of such duties, and also for re-assessing the same in default of payment, and for making and allowing such deduction as aforesaid, and for the suing for, adjudging, and recovering any penalty which shall have been or may be incurred.

#### INFANTS MARRIAGES.

18 & 19 VICT. C. 33.

Infants may, with the approbation of the Court of Chancery, make valid settlements or contracts for settlements of their real and personal estate upon marriage; s. 1.

In case infant die under age, appointment, &c., to be void; s. 2.

The sanction of the Court of Chancery to be given upon petition : s. 3.

Not to apply to males under 20, or females under 17 years of age ; s. 4.

The following are the Title and Sections of the Act :—

An Act to enable Infants, with the Approbation of the Court of Chancery, to make binding Settlements of their Real and Personal Estate on Marriage.

[2nd July, 1855.]

Whereas great inconveniences and disadvantages arise in consequence of persons who marry during minority being incapable of making binding settlements of their property : For remedy whereof be it enacted as follows :

1. From and after the passing of this Act it shall be lawful for every infant upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery, to make a valid and binding settlement or contract for a settlement of all or any part of his or her property, or property over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy ; and every conveyance, appointment, and assignment of such real or personal estate, or contract to make a conveyance, appointment, or assignment thereof, executed by such infant, with the approbation of the said Court for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of 21 years : Provided always, that this enactment shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

2. Provided always, That in case any appointment under a power of appointment, or any disentailing assurance, shall have been executed by any infant tenant in tail under the provisions of this Act, and such infant shall afterwards die under age, such appointment or disentailing assurance shall thereupon become absolutely void.

3. The sanction of the Court of Chancery to any such settlement or contract for a settlement may be given, upon petition presented by the infant or his or her guardian, in a summary way, without the institution of a suit ; and if there be no guardian, the Court may require a guardian to be appointed or not, as it shall think fit ; and the Court also may, if it shall think fit, require that any persons interested or appearing to be interested in the property should be served with notice of such petition.

4. Provided always, That nothing in this Act contained shall apply to any male infant under the age of 20 years, or to any female infant under the age of 17.

## NOTICES OF NEW BOOKS.

*A Manual of the Practice and Evidence, in Actions and other Proceedings in the County Courts ; with the Statutes and Rules.* By JAMES EDWARD DAVIS, Esq., of the Middle Temple, Barrister-at-Law. Second Edition. London : Butterworths. 1855. Pp. 576.

MR. DAVIS, in this his Second Edition of the Practice and Evidence in Actions in the County Courts, has embodied the several alterations in the law and practice of these tribunals which have taken place since the first publication of his work. In noticing the general scope of these alterations, he observes in his Preface, that—

“The provision enabling the parties to be examined as witnesses in the County Courts has been extended, as the Author prognosticated, to the Superior Courts, with (he ventures to say), on the whole, very beneficial results, while the Common Law Procedure Act, 1854 (the 17 & 18 Vict. c. 125), has introduced alterations in the practice on the trial of actions in all Courts of Civil Judicature, of so extensive a character as to require the attention of every one engaged in the conduct of actions in the County Courts no less than in the Superior Courts. The new provisions, accordingly, have been fully treated of in the present work under the different heads of evidence, of handwriting and the proof of attested instruments, the examination, cross-examination and contradiction of witnesses, and the stamping of documents at the trial.

“The Bankrupt Law Consolidation Act, and the provisions respecting Compositions and Arrangements by Bankrupts and Insolvents with their creditors, and the law as to Bills of Sale, among many other recent Statutes, materially affect the rights and liabilities of suitors.

“Nor is it by reason of Legislative enactments alone that a revision of the former edition became necessary. The Courts of Law, in the meantime, have been occupied in defining the law and reviewing their former decisions in many branches. The evidence of part payment to take a debt out of the Statute of Limitations, the effect of giving a bill or note on account of a claim, and the liability of members of unincorporated companies, may be cited as practical points of almost daily occurrence, where reliance cannot now be placed on the older cases.

“An addition has been made to the original work by the introduction of the practice of the County Courts from the commencement to the termination of suits. In giving a general view of the practice of the Courts the Author has merely yielded to a wish expressed by many purchasers of the former edition, and has had no desire to enter on a field already occupied by other labourers. Bearing in mind that this

part of the work, at least must be chiefly used by practitioners in the Courts, who will consult it with a view to ascertain the nature of the claim or defence they may represent, and the proper tribunal and mode of proceeding in order to establish it, and who are comparatively indifferent to the original constitution of the Court or the nature of the appointment of its officers; the Author has arranged the proceedings, as far as possible, with reference to the steps to be taken by plaintiffs and defendants in the prosecution of their rights. Commencing with the jurisdiction of the County Courts and showing when a plaintiff ought to sue in these Courts, and when he has the option, without risk as to costs, of suing in the Superior Courts, the steps to be taken to sue out a summons are next considered. This is followed by a statement of the powers and duty of a defendant on service of the summons. The subsequent steps immediately before and at the trial, down to judgment and execution, are stated, as well as the incidental proceedings on an application for a new trial and on appeal.

"While these pages have been passing through the press, the First Report of the County Courts Commissioners has appeared. It is almost needless to say, that should the suggestions of the Commissioners be carried into effect at some future period, they will affect the present work in a very trifling degree, for while the only new actions which the Commissioners recommend to be placed within the jurisdiction of the County Courts are actions for malicious prosecution, the present general jurisdiction of the Courts in regard to the amount, cause of action, and situation of the parties, are left untouched."

The First Part of the volume comprises the proceedings and practice of Plaintiffs and Defendants in actions in the County Courts. The Second Part treats of the general rules of Evidence of Actions in those Courts. The Third Part is devoted to Evidence in Actions on Contracts. The Fourth, to Evidence in Actions for Torts. The Fifth relates to Actions of Replevin, recovering possession of Small Tenements, and Interpleader Claims. The Appendix contains the Statutes and Orders of Court.

## REMUNERATION OF SOLICITORS.

WE have received some suggestions from a Correspondent on the pressing and important subjects of Solicitors' Costs, from which we select the following passages for the consideration of our readers, and especially of those who are engaged in Chancery practice.

The first question which arises on the subject under consideration is, "Have the Solicitors: any, and what, right, moral or

equitable, if not legal, that their rate of remuneration for any given quantity of actual work should be maintained through the varied forms into which successive changes of practice, made for the benefit of the suitor may shape it?"

The Solicitors do not claim the maintenance of their old rate of payment for actual work, on the ground of the public interest alone, in keeping up the character and social position of the Profession. That may be, and we believe is, a reason important enough for the public to act upon. So long as it is deemed advisable for the public to apply to the remuneration of solicitors the principle, now abandoned as to every other occupation, of a legislative tariff of charges, the public must keep this point in consideration; but they claim it as officers of the Court, bound to perform its requirements, debarred by the rules of the Court from availing themselves of the ordinary rights of the employed, and placed as to their remuneration in precisely the same position in which all its other officers, including the Judges themselves, were formerly placed. The Judges and all the other officers, as well as solicitors, until the recent changes, which began on the Report of the Committee of the House of Commons in August, 1833, were paid by fees taken on each of the steps and processes of the cause. That system has been abrogated by the Legislature as to one class of officers after another; and lastly, as to the Judges, on the ground that to give an interest in multiplying steps and processes was a very false principle, and highly detrimental to the suitor—a reason even more cogent with reference to the mode of remunerating solicitors, than with reference to the mode of remunerating any other officer of the Court whatever.

On abolishing the fee-remuneration of other officers, the Legislature has always acknowledged the right of the officer not only to be fairly remunerated for the duties performed by him under the changed form into which those duties were thrown, but, also, to compensation for the loss of previous emolument, for which he did not, after such changes, perform any duties whatever. The reasons are obvious enough. The officer had attached himself for life to the Court, and it was for the interest of the suitor that he should do so, and by the length of time required to qualify himself for his office, he was quite debarred from going into any other class of employment. The solicitors conceive that they have

just the same right to be paid for services actually performed:—and that the great expense of their education, the Court examinations and regulations they have submitted to, the number of years they have necessarily waited to begin to derive any remuneration, the outlay many of them have made in purchasing their businesses, are specialties in their case entitling them to full as much consideration with reference to maintaining the scale or rate of remuneration for actual work done as any other officer of the Court whatever; more especially as they do not ask for compensation for the decrease of their emoluments, caused by changes made for the benefit of the public. It would seem, indeed, quite obvious, that if a scale of remuneration were framed with reference to a particular mode of conducting business, the solicitor, who cannot adapt his own rate of remuneration to a changed mode, but is bound to take such sums for his labour as may be fixed by the rules of the Court, is entitled to have that scale altered, so as at least to keep him on the same footing as before. It is only because they are officers of the Court that the Court has any power on this subject; and because they are its officers, it has, and exercises, a power so absolute as materially to have affected their very means of life. The responsibility for the due exercise of this power, is, of course, correspondent with its extent.

Beyond these grounds, which lie between the Court and the solicitors; there are peculiar ones between the State and the solicitors. The large Government taxes (on articles and admission) they have paid, create a special reason. For the public to sell the appointment in this way, and then afterwards to cut down the emoluments for actual work to two-thirds or one-half of the old rate, concurrently with increasing the share of the work to be done, can hardly be justified by any desire to give the suitor cheap justice.

The late Act of Parliament, in directing the Lord Chancellor, with the assistance of the Master of the Rolls, and two Vice-Chancellors, to assign changed fees to the solicitors to meet the changed forms in which their old work was in future to be done, must be taken to have legislatively declared the existence of the right now urged. It cannot be imagined that to assign any fees merely titular and illusory, or to assign such as would materially affect the position of a solicitor, would be to perform the duty imposed by the Legislature in the way it intended.

Assuming a right to maintain a fair rate of remuneration for actual work, based upon the previous emoluments of solicitors, they next ask—

“Have the late changes in practice and orders of the Court (either or both) impaired the solicitor's remuneration for actual work, and if so, to what extent?”

Accounts, which have been carefully prepared, show that the effect of the recent alterations has been to reduce the profits of solicitors about *two-fifths*, without making any allowances for dead-weight charges of interest on the capital embarked in the business, or the necessary deduction for bad debts, those dead-weight charges remaining very much as they were before.

Then, “Assuming that solicitors have suffered a diminution of two-fifths of their remuneration for actual work done in the Court of Chancery, what is the wisest mode of repairing the injury?”

The present inadequate remuneration results by no means exclusively from the last alterations, but in a considerable degree from all the changes which have been introduced since the year 1845; and business paid for upon the scale now proposed would not yield larger emoluments than were obtained for an equal amount of work ten years ago.<sup>1</sup>

With reference to the very important subject of adopting, if possible, in the case of legal agency, the *ad valorem*, or percentage principle, which the wisdom and experience of the world, where unrestrained, has almost invariably in every other class of agency introduced, in this and every other country, and as to legal agency has introduced it in every other country except this, it may be observed that the introduction of such a principle would only be extending the principle on which pauper suits are required to be conducted:—and thus permitting the small business of the Court, which involves a minor degree of risk and responsibility, and which is undertaken for parties less able to bear the charge, and results in decrease of less pecuniary value, to be conducted for a rate of remuneration which would be entirely inadequate in large and heavy matters. This view of itself would require (were there no other consideration), that to a certain extent business ought to be charged for in proportion to the value of the property affected. But when to this consideration is added the further one, that

<sup>1</sup> See the revised summary of alterations suggested by the Council of the Incorporated Law Society, p. 202, post.

thus only can an identity of interest between the employer and the employed be effectually secured, the subject becomes of the highest importance. We believe (in common, we think, with the bulk of our branch of the Profession) that a bold application of this almost universal principle of remuneration to legal affairs, so far as agency and administration goes, would be one of the wisest and largest improvements in the general working of the law which could be devised.

There can, on the ground of right and wrong towards the suitor, be no difference between an *ad valorem* system of pay to solicitors for administration business, and an *ad valorem* system of tax on the suitors for raising the income of the Court. But the propriety in point of right and wrong of such a system of Court taxation is admitted. For many years half the lunacy fees were so raised. It has answered so well that all are now so raised. The percentage fee on taxation was adopted with the same view, and the Select Committee of the House of Commons on fees propose,

"That the fees should be levied with as little inconvenience to the suitor as possible, and should, as nearly as may be, represent the amount of benefit derived by him.

"That the amount required for the maintenance of the Court of Chancery, when the income arising from the Sutors' Fund is insufficient to pay, should be raised in the following manner; viz.—

"1st. That a poundage of one-half per cent. should be paid on the investment of all sums of money paid into Court, and one-half per cent. on the amount of all dividends, and one-half per cent. on the passing of the accounts of all receivers.

"2nd. That a fee of sufficient amount to make up the rest of the income required should be paid on every order pronounced by the Court."

## REVISED SUMMARY OF ALTERATIONS IN SOLICITORS' COSTS.

SUGGESTED BY THE COUNCIL OF THE INCORPORATED LAW SOCIETY.

### General Suggestions.

1. THAT consideration be given to any special agreement for remuneration which may have been entered into by competent parties. A recent decision of the Lords Justices, in *re Moss* (in the matter of *Bainbrigge*), seems to have sanctioned this principle, but it is proper that it should be adopted by a public and authoritative declaration.

2. That the officer taxing or ascertaining the

solicitor's remuneration shall have regard to the actual skill and labour employed and responsibility incurred, and not merely to the length or multiplicity of the written forms of proceeding, and make such allowances to the solicitor as his services fairly deserve, although no specific fee applicable to such services may be stated in the scale. See 8 & 9 Vict. c. 124.<sup>1</sup>

3. That in carrying out the second direction, necessary attendances and correspondence in the progress of a cause or matter, including, in country cases, letters between the country client and town agent, be allowed.

4. That a fee on ending be allowed for the term in which a cause or matter should be brought to a conclusion, the amount to be in the discretion of the proper officer, who shall have regard to the importance of the case, the amount of property involved, and the skill and diligence exerted by the solicitor.

5. That interest be allowed to the solicitor on all disbursements from the end of the year in which the same shall have been made, and on all bills from the time they shall have been delivered, or if taxed as against a fund, then from the end of each year in which the business shall have been transacted.

6. That (for avoiding frequent references for taxation, and in order that the officers before whom business is done may fix the proper remuneration), the chief clerks of the Judges may be authorised, as far as practicable, to fix the sum to be paid for costs in any matter transacted in the Judge's Chambers.

7. That in all proceedings for Administrations where the property involved shall not exceed 500*l.*, the costs to be taxed upon the existing scale, and for proceedings involving a larger sum, to be taxed according to the improved scale. The scales, if thought proper, may be multiplied.

8. That a Commission be allowed on the

<sup>1</sup> This proposal to give greater discretionary powers to the Taxing-Masters is not new; and it will no doubt meet with their full concurrence.

It was with this view that the qualification for the office they hold, and its liberal salary, were fixed in the Statute of 1842; in consequence of representations made to the late Master of the Rolls by this society, founded on the report of a committee, of which some of the present Taxing-Masters were then members, to the effect, "That a far more discretionary system of remuneration was absolutely required for the interest of the suitor, and to enable the necessary simplifications of procedure to be carried out; that such discretion could only be exercised satisfactorily to the Profession by officers chosen from its head members, and that to induce solicitors in that position to leave their Profession, a high rate of salary would be required."

The Masters of the Courts of Common Law have discretionary powers of a similar nature, which they find no difficulty in executing.

receipt and payment of money into and out of Court.

### Specific Fees.

9. That the following fees and allowances be made, viz. :—

#### Instructions.

That the solicitor be allowed a discretionary fee as instructions for all important proceedings, and that the proper officer be authorised to allow an increase on the present fixed fees for instructions in all cases, according to the importance of the business.

#### Drawing and preparing Documents.

That the fee for drawing documents, statements, pedigrees, and affidavits be 1s. per folio, exclusive of a fair copy.

#### Perusing, &c. £ s. d.

For perusing the answer of the defendant . . . . . 0 13 4

And if exceeding 30 folios, at the rate of 6s. 8d. for every additional 30 folios completed.

For perusing documents and evidence of the opposite party, for every quantity exceeding one sheet and not exceeding three sheets . . . . . 0 6 8

And at the same rate for every quantity exceeding three sheets.

For examining or checking accounts not prepared by the solicitor, or for time necessarily occupied preparatory to attendance before a Judge, Chief clerk, or Master, not covered by the last item, 10s. per hour.

That the proper officer shall have a discretionary power of increasing the fee now allowed for perusing the plaintiff's bill, and also the above items, in cases of importance and difficulty.

#### Service of Process, Summonses, Orders, Notices, &c.

The charge now allowed for service on the solicitor of summonses, to extend to all proper notices, such, for example, as the following :—Of filing answers, affidavits, and other proceedings; of reading previous evidence under order of October, 1852; of appointments before examiners; adjournments of summonses; of taxations; settling minutes, and passing orders, &c.

#### Attendances. £ s. d.

For attending the printer with bill or claim, and afterwards with revise . . . . . 0 6 8

Attendances on settling answers and special affidavits . . . . . 0 13 4

Attending filing affidavits, and delivering copies . . . . . 0 6 8

Attending to examine each copy of interrogatories, and get each marked as an office copy . . . . . 0 6 8

Solicitor's attendance in Court, for each day cause on . . . . . 2 2 0

For the attendance in Court, in cases of importance, of solicitors' clerks; in addition to the solicitor's attendance . . . . . 0 6 8

For attending the *vidē voce* examination of witnesses where no counsel employed (per day) . . . . . 2 2 0

The like where counsel employed . . . . . 0 13 4

For every additional hour after the first hour where counsel employed . . . . . 0 10 0

Attending at Record Office to bespeak office copy of proceedings, and afterwards for the office copy . . . . . 0 6 8

For attending in Chambers, where 6s. 8d. now charged, the fee to be . . . . . 0 10 0

Other fees to be increased in the same proportion.

Attending to settle minutes and pass orders and decrees (according to the time occupied). The fee to be marked by the registrar.

For attending the Record clerk for certificate, in order to set down cause . . . . . 0 6 8

For attending Accountant-General, bespeaking certificates of funds in Court, and afterwards for the same . . . . . 0 6 8

For time properly employed by the solicitor personally, 10s. per hour, and at the rate of 3l. 3s. per day when absent from his place of business.

#### Costs between Party and Party.

That in the taxation of costs between party and party, all costs be allowed, which, on a taxation of costs between solicitor and client, to be paid out of a fund in Court, would be held to have been properly incurred.

#### Appeals.

All appeals from the Taxing-Masters to be made (as at Common Law) to the Judge at Chambers.

## POWERS UNDER IMPROVEMENT ACTS REGULATION.

THIS Bill, which has been introduced by the Marquis of Salisbury, for regulating the Powers of creating Charges on Land under Private Acts for Drainage and other Improvements, recites that under several Acts of Parliament, by which companies have been established or authorised to execute works of drainage and other works for the improvement of lands, or to provide money for the expenses of the execution of such works, the owners of limited interests in land are empowered to charge or cause to be charged the inheritance thereof with the repayment of the principal money so expended or advanced, and interest thereon, or with equivalent rent-charges in respect thereof: and for the protection of other persons interested in lands which may be charged by the acts of such owners of limited interests, it is expedient that the exercise of the powers conferred by such Acts should be



regulated as after mentioned: it is therefore proposed to enact as follows:—

1. No charge hereafter to be made on land by means of the powers conferred by any such Act as aforesaid, or by any Act (not being a public general Act) under which charges are authorised to be made on land in respect of works of improvement executed at the request of owners of limited interests therein, shall in anywise affect any estate or interest in such land, other than the estate or interest of the person by whom or upon or in consequence of whose application or request such charge shall have been made, unless the inclosure commissioners, by an order under their seal, certify that the sum specified in such order, and in respect of which such charge is made, has been expended in durable works for the improvement of such land, and that the inheritance of such land is benefited by the execution of such works to an amount equal to or exceeding the amount of moneys to be secured and made payable under such charge, nor unless the duration of such charge be limited in manner hereinafter-mentioned.

2. Every such charge shall be by way of annuity or other periodical payment of equal sums in each year, and the duration of such annuity or periodical payment shall not exceed 25 years from the time of the completion of the works in respect of which the charge is made.

3. Every owner by whom or upon or in consequence of whose application or request a charge shall after the passing of this Act have been made by means of any of the said powers, and every succeeding tenant for life, and other person having a limited interest in the land charged, shall, as between such person and the persons in remainder or reversion, be bound to pay the yearly or other periodical payments of such charge which become payable during the continuance of his interest, and, in case he be in the actual occupation of or entitled to an apportioned part of the rents and profits of such land up to the time of the termination of his interest, shall also be bound to pay an apportioned part of the yearly or other periodical payment of such charge which becomes due next after the termination of his interest, proportioned to the time which elapsed between the day for the previous payment and the day of such termination: Provided always, that any such person entitled in remainder or reversion, and becoming entitled in possession, shall not be liable to pay nor shall his estate or interest be chargeable with any arrears of the charge remaining unpaid at the time of his estate or interest in remainder or reversion becoming an estate or interest in possession exceeding the amount of one year's payment of such charge: Provided also, that the amount paid by such person in respect of such arrears, and any costs occasioned by non-payment thereof, shall be a debt from the person who in the first instance ought to have paid the same; or from his estate to the person who paid the same, and shall be recoverable accordingly.

## LAW OF ATTORNEYS AND SOLICITORS.

### PERSONAL LIABILITY TO CLIENTS, AND FOR COSTS.

*Advising a breach of trust.*—A solicitor, advising a loan unauthorised by the trust, for the purpose of deriving a benefit from it, as the payment of his debt, is liable for any loss consequent on the breach of trust. *Fyler v. Fyler*, 3 Beav. 550.

*Incorrect statement of deeds in case for counsel.*—An attorney employed on behalf of the purchaser of an estate, laid the case before Mr. Preston, but instead of setting out certain deeds assumed that M. was tenant in fee, whereas C. had an estate for life.

*Bayley, J.*, said,—“Although it may not be part of the duty of an attorney to know the legal operation of conveyances, yet it is his duty to take care not to draw wrong conclusions from the deeds laid before him, but to state the deeds to the counsel whom he consults, or he must draw conclusions at his peril. It therefore appears to us, that in omitting those deeds, and erroneously describing Malin as the tenant in fee, there was negligence in the defendant.” The judgment of the Court was therefore given for the plaintiff in an action against the attorney for such negligence. *Ireson v. Pearman*, 3 B. & C. 799; 5 D. & R. 687.

*Misdescription in rental on sale.*—A plaintiff's solicitor was held personally liable to the costs of a reference to the Master to inquire and report whether a purchaser was entitled to any and what compensation, by reason of a misdescription in the rental, caused by his neglect in not examining the leases lodged in the Master's Office. *Taylor v. Gorman*, Fl. & K. 567; 4 Ir. Eq. Rep. 550.

*Acting imprudently in matter of voluntary settlement.*—Where a solicitor, acting for both parties in the matter of a voluntary settlement, which was set aside for undue influence, had not acted in the matter with proper prudence, although the Court exonerated him from culpability, he was held liable to bear his own costs as a defendant to such suit. *Harvey v. Mount*, 8 Beav. 439.

*Non-appearance when cause called on.*—The solicitor for a plaintiff, not appearing when the cause was called on, was ordered personally to pay the costs of all parties, although the defendant did not appear. *Courtney v. Steat*, 1 Con. & Law. 366; 2 Dr. & Wm. 251.

*Absence of material witness.*—Where an attorney for the plaintiff suffered the case to be called on without previously ascertaining whether a material witness, whom the plaintiff had undertaken to bring into Court, had arrived, in consequence of which the plaintiff was un-

suited: *Held*, that in an action for negligence, it was properly left to the jury to say whether he had used reasonable care in conducting the cause; and the jury having found in the negative, the Court (*Abbott, C. J.*) refused to disturb the verdict. (Jan. 24, 1821.) *Reece v. Rhyby*, 4 B. & Ald. 202.

**Obtaining payment of money in Court to wrong person.**—A solicitor, obtaining the payment to a person of money in Court which he knows belongs to another, is personally responsible; and the principle applies, if he has merely a knowledge of circumstances, which if duly considered, would lead to a knowledge of the facts. *Esart v. Lister*, 5 Beav. 585.

**False address of client in bill.**—The plaintiff's attorney having wilfully and falsely described him in the bill as resident within the jurisdiction, was held liable for the costs of a motion to stay until security was given for costs. *Knoc v. O'Brien*, 3 Ir. Eq. Rep. 64.

**Correcting error in decree.**—The solicitor of a defendant in a suit was held liable to the costs of an application to correct an error in drawing up a decree inserting the word *inquiry* for *sale*. *In re Bolton*, 9 Beav. 272.

**Not charging in execution in due time.**—*Held* (*Bayley, J.*), that an action against an attorney for negligence, in not charging a defendant in execution in due time, whereby the plaintiff alleged that he lost the fruits of his judgment, would not lie, where the meaning of the rule of Court of Hilary Term, 26 Geo. 3, in reference to the time within which the defendant was to be charged in execution, was obscure. *Laidler v. Elliott*, 3 B. & C. 738; 5 D. & R. 635.

**Payment of deposit without purchaser's concurrence.**—The vendor's solicitors on a contract for purchase paid away the deposit at the desire of the vendor without the concurrence of the purchaser. Difficulties having in consequence arisen by reason of a mortgagee refusing to join, the solicitors were held liable to replace the money in a suit by the purchaser for a specific performance. *Wiggins v. Lord*, 4 Beav. 30.

**Unauthorized appointment of new next friend.**—The mother of an infant employed a solicitor to prosecute a suit on its behalf, but, after the death of the next friend, she discharged him. The solicitor, nevertheless, amended the bill and named a next friend without her sanction: *Held*, that he was liable to the costs of an application to remove such next friend and for the appointment of another in his stead. *Lender v. Ingersoll*, 4 Hare, 596.

**Proceeding in suit without authority.**—A solicitor is liable for the costs, charges, and expenses occasioned by taking a proceeding in the Master's Office in a suit in the name of a

person without his authority. *Malins v. Greenway*, 10 Beav. 564.

**Proceeding after revocation of authority.**—A solicitor taking any further steps, after the revocation of his authority, will be answerable for the costs thereby occasioned, and of any motion to restrain the same. *Freeman v. Fairlie*, 8 Law J., N. S., Ch. 44.

**Proceeding under wrong section of Statute against apprentices.**—An attorney, being employed by masters to take proceedings against their apprentices for misconduct, did so specifically on a wrong section of a Statute: *Held*, that he was liable to repay all damages and costs thereby occasioned. *Hart v. Frame*, 6 C. & F. 193; MacL. & R. 595.

**On failure of security by want of notice to lessor.**—The borrower's solicitor, on the assignment of a lease to secure a loan, acted also for the lender but without charging for his services: *Held*, that he was, nevertheless, liable to the lender for a failure of the security occasioned by want of notice to the lessor. *Donaldson v. Haldam*, 7 Cl. & F. 762.

**Insufficient security.**—A solicitor, who took an insufficient security for his clients in a case of combined agency and trust, was held personally responsible for the deficiency and costs of suit. *Craig v. Watson*, 8 Beav. 437.

**Securing annuity by deed not under seal.**—*Semble*, that an attorney who receives instructions to prepare a security for the payment of an annuity to a woman in consideration of past cohabitation, is guilty of actionable negligence, if he do it by a mere agreement only, not under seal. *Parker v. Rells*, 14 Com. B. 691. (10th May, 1854).

[We propose to give the remainder of the decisions on this subject in an early Number.]

## ORDER OF THE LORD CHANCELLOR.

### FOR CLOSING THE ACCOUNTANT-GENERAL'S OFFICE.

In the matter of the Sutors of the High Court of Chancery.

WHEREAS it is proper that the accounts kept by the Accountant-General of this Court should be examined and compared in order to settle the same; And whereas it will require considerable time to perfect such examination, and it is necessary that a time should be appointed for closing the books of accounts of the said Accountant-General for the purposes aforesaid, His Lordship doth Order, that the books of the said Accountant-General be closed from and after Saturday, the 18th day of August next to Saturday, the 27th day of October next inclusive, excepting upon the days and for the purposes hereinafter men-

tioned, in order to adjust the accounts of the suitors with the books kept at the bank; and that during that time no draft for any money except as hereinafter provided, or certificate for any effects under the care and direction of this Court be signed or delivered out by the said Accountant-General, or any stocks or annuities accepted or transferred by him relating to the suitors of this Court. And that no purchase, sale, or transfer be made by the said Accountant-General, unless the order, request, or registrar's certificate be left at his office, on or before Friday, the 10th day of August next. And that no order for payment of any money out of Court, which may be then in Court, be received at the Accountant-General's Office after Monday, the 13th day of August next. Provided, nevertheless, that the office of the said Accountant-General shall be open on Monday, the 15th, Tuesday, the 16th, and Wednesday, the 17th days of October next, for the delivery out of any regular interest drafts which have become payable in respect of the October dividends and of any other regular interest-drafts which shall have become payable during the closing of the office as aforesaid. And to the end that the suitors may have notice hereof and apply to the Court, as there shall be occasion to have money paid to them out of the bank, or stocks, or annuities transferred to them before the said 18th day of August next, His Lordship doth Order that this order be affixed up in the several offices of this Court.

CRANWORTH, C.

30th June, 1855.

## PRODUCTION OF DOCUMENTS.

### PROFESSIONAL COMMUNICATIONS ANTE LITEM MOTAM.

IN a suit seeking to impeach an agreement for the sale of leaseholds of the plaintiff, and to set aside the conveyance to F. Langford pursuant thereto, and purporting to be under a power of sale, production was claimed of the following documents:—1. Instructions to counsel on the part of F. Langford for the preparation of the draft of the agreement; 2. The original draft of the agreement, approved by counsel; and 3. The opinion of counsel on certain alterations in the draft indenture.

The Vice-Chancellor Wood said:—

"These are communications between a man and his legal adviser, drafts prepared by counsel, and opinions of counsel thereon, all of which were long *ante litem motam*. According to the report of *Lord Walsingham v. Goodricke*, 3 Hare, 122, which is the most favourable case for the plaintiff, Vice-Chancellor Wigram, having remarked that he would not order the documents in question in that case to be produced if the matter were *res integra*, closed his judgment by saying, 'Any part of

the letters which contains legal advice or opinions may be protected, if the fact is brought before the Court by affidavit.' Now, a draft prepared by counsel comes clearly under the head of legal advice. It would contain marginal observations or alterations made by counsel, which fall within the definition of legal advice. There is more difficulty respecting the instructions of F. Langford to his counsel for the preparation of the draft; and upon this point one cannot but regret to see the number of cases that have occurred of late years, and the discrepancy between some of the decisions. In *Lord Walsingham v. Goodricke*, I cannot help observing the desire of the learned Judge to escape from the decisions in previous cases. If the matter were *res integra*, he says, he should scarcely hesitate to decide in favour of the privilege. His Honour considered himself bound by the decisions in *Hughes v. Biddulph*, 4 Russ. 190; *Vent v. Pacey*, id. 193; and *Bolton v. The Corporation of Liverpool*, 3 Sim. 467; 1 My. & K. 88, to hold that letters which passed between a solicitor and his client, and cases prepared anterior to litigation or dispute were not privileged. However, I cannot but accede to a great part of the reasoning in *Pearse v. Pearse*, 1 De G. & S. 12. It is difficult to reconcile on principle the protection of the client which privileges him from disclosing anything which passed between himself and his solicitor in consultation, and the decisions as to letters passing between them, and documents prepared before any dispute has arisen concerning the subject to which they relate. You can, of course, extract from the client everything that he knows; the circumstance that he has communicated it to his solicitor, is not a reason for refusing this kind of discovery. You would be able to discover every fact in the client's knowledge; but you must get them from him upon oath, and as you could not call his solicitor to contradict anything which he may say by disclosing what may have passed between them in consultation, I should have thought, independently of authority, that the true rule would be, that as you could not show that in conversation with his solicitor he had made such and such statements, of course everything which he wrote to his solicitor should be equally privileged. On this point the authorities present some difficulty; there are decisions by which cases have been ordered to be produced, but not the opinions on them. *Lord Langdale*, whose views on this subject were, that it would be a beneficial rule that everything should be produced, seems to have gone very far in *Flight v. Robinson*, 8 Beav. 22, where, there being a discussion with reference to a sale by auction, the defendants sought to protect themselves from the production of certain papers, which *Lord Langdale* in page 38 says, 'may, perhaps, be assumed to consist of confidential communications between attorney or counsel and client, but they did not take place either in the progress of the suit or with reference to the suit previous to

its commencement. They are properly distinguished as having taken place before the 10th day of November, 1838, the day on which the relation of vendor and purchaser arose between the defendants and the plaintiff. The defendants, being in circumstances of hazard and responsibility in their management of the estate for their own security and protection, made statements for the opinion of counsel, and allege them to be privileged communications, which in one sense they are, for their attorney would not be permitted to disclose them; but they are not, in my opinion, so privileged as to protect the defendants themselves from discovering them in answer to the plaintiff's bill.'

"The plaintiff in that suit was a purchaser attempting to escape from the performance of his contract, and it certainly seems alarming to find it laid down positively in a case of that kind, that, if a vendor discloses to his solicitor confidentially, 'being in circumstances of hazard and responsibility,' all the facts relating to the estate, there being at the time no dispute, and afterwards litigation arises in which his title is impeached by a person who has no fiduciary relation to him, he is obliged to disclose all that formerly passed between himself and his solicitor, possibly suggesting doubts which might be thrown upon his title. That case is in conflict with *Pearse v. Pearse*, where the question was, whether the vendor was compellable to disclose his motive for making a certain appointment, or confidential communications made, not during a dispute or after any threat of dispute. Lord Justice *Knight Bruce*, then Vice-Chancellor, put this case,—'If a man is in possession of an estate as owner, he is not under any fiduciary obligation, he finds a flaw, or a supposed flaw, in his title, which it is not, in point of law or equity, his duty to disclose to any person; he believes that the flaw or supposed defect is not known to the only person, who, if it is a defect, is entitled to take advantage of it, but that this person may probably or possibly soon hear of it, and then institute a suit or make a claim. Under this apprehension, he consults a solicitor, and through the solicitor lays a case before counsel on the subject, and receives his opinion. Some time afterwards, the apprehended adversary becomes an actual adversary; for, coming to the knowledge of the defect or supposed flaw in the title, he makes a claim, and after a preliminary correspondence, commences a suit in equity to enforce it, but between the commencement of the correspondence and the actual institution of the suit, the man in possession again consults a solicitor, and through him again lays a case before counsel. According to the respondent's argument before me on this occasion, the defendant in the instance that I have supposed, is as clearly bound to disclose the first consultation and the first case, as he is clearly exempted from discovering the second consultation and the second case. I have, I repeat, yet to learn that such a distinction has any

foundation in reason or convenience;' and then he observes upon the case of *Cholmondeley v. Clinton*, 19 Ves. 267, where the Lord Chancellor protected from discovery matters of title come to the knowledge of the defendant's solicitor, in consultations concerning the title. He continues,—'The contest is in the Master's office between a vendor and purchaser. It must be borne in mind that the discovery sought is of matters anterior to the contract, and concerns the question of title only, and that in order to obtain the production upon oath by the vendor (the exceptant) of such documents as he ought to produce, it may well be that not a single interrogatory may be necessary; and my opinion is, that as to some portions at least of the interrogatories before me, it is only upon a special case, if at all, that as between parties standing in the relative positions and in the circumstances in which the parties here stand, they ought to be allowed. But I am not aware of any such special case having yet been made;' and he ends by allowing the exceptions. It is clear, that in that case the party consulted his solicitor with a view to the sale, and previous thereto, without reference to the particular difficulties as to the title; and the communications made under that species of apprehension, the Court thought ought to be protected. That decision and *Flight v. Robinson* can hardly stand together.'

"*Lord Walsingham v. Goodricke*, was not a case of title, but the question there was whether the contract had been concluded or not. The defendant said, that it had not. There had been no communication upon the title, but the defendant had written letters to his solicitor, as his solicitor and confidential adviser, and insisted that he was not bound to produce them; the Vice-Chancellor, after saying that, if the question were *res integra*, he would not order them to be produced, held, that as there had been no dispute at the time, he could not consider those documents to be privileged, except so far as they contained legal advice or opinions. With respect to the apprehension of intended litigation, he says—'The next contest was upon communications made before litigation, but in contemplation of and with reference to litigation which was expected and afterwards arose, and it was held that the privilege extended to these cases also.' A third question then arose with regard to communications after the dispute between the parties, followed by litigation, but not in contemplation of or with reference to that litigation, and those communications were also protected: *Bolton v. Corporation of Liverpool*; *Hughes v. Biddulph*; *Vent v. Pacey*; *Clagett v. Phillips*, 2 Y. & C., Ch. 82. A fourth point which appears to have called for decision, was the title of a defendant to protect from discovery, in the suit of one party, cases or statements of fact made on his behalf by or for his solicitor or legal adviser on the subject-matter in question after litigation commenced, or in contemplation of litigation on the same subject

with other persons, with the view of asserting the same right. This was the case of *Combe v. The Corporation of London*, 1 Y. & C., Ch., 631. The question in that suit was, the right of the corporation to certain metage dues, and the answer stated that other persons had disputed the right of the corporation to metage, and that they had in their possession cases which had been prepared with a view to the assertion of their rights against such other parties in contemplation of litigation, or after it had actually commenced. Sir J. L. Knight Bruce held, that those cases, relating to the same question, but having reference to disputes with other persons, were within the privilege; and I perfectly concur in that decision.

"The case here is that the plaintiff is disputing the title of a defendant, who has purchased this property, as the plaintiff alleges, with notice of facts which would give the plaintiff an equity to set aside the purchase. It is not a case of alleged fraud between the defendant's solicitor and himself, nor indeed of fraud at all, except that the Court would not allow the defendant to take with notice of a breach of trust; and the contest is, whether any trust ever in fact existed. The bill impeaches the agreement of the 24th of June, 1851, and the conveyance thereunder of the 25th of August, 1851, with relation to which the communications in question took place. The documents, of which production is now sought, are instructions for the draft of the agreement, which resulted in the draft, and the original draft itself, and also the opinion of counsel upon certain alterations in the draft. Both the latter, as I have already intimated, I consider to be within the privilege. The question is, whether the instructions for that draft are protected also. I can scarcely conceive any case more calling for protection at the hands of the Court. A party wishing to make his title secure consults his solicitor, being about to deal with trustees for sale of the property, the original owner of which, who made the conveyance in trust for sale, is not a party to the transaction: the intended purchaser wishing to be made sure, and knowing, as every one does, the perils which surround a case of that kind, even where everything seems to have been formally done to authorise the trustees to make a title, sends instructions to his counsel. To say that these instructions are not privileged would be a refinement which I cannot make in a case of this description. If I were to order these instructions to be produced, I should go the whole length of deciding, that in every case between vendor and purchaser, if the purchaser raises a difficulty upon the title, he would be entitled to say, that 18 or 20 years before, when the same property was offered for sale, the person then selling had certain consultations with his solicitor or counsel, there being then no dispute, and as soon as the contract was concluded he sent instructions for a conveyance to his counsel, and that the purchaser

in every such case would be entitled to see those documents. If that be the rule, I do not see how to prevent the enormous injustice of enabling every purchaser to obtain production and discovery of all objections to the title, and everything that has passed between the vendor and his solicitors with reference to the title. That would involve all the consequences so forcibly pointed out by Lord Justice Knight Bruce in *Pearse v. Pearse*; and having to choose between the view of that learned Judge and that of Lord Langdale, and considering the comparative expediency of the two courses, I have no hesitation in saying, that nothing could exceed the injustice of a Court of Equity taking the course of prying into all the transactions between a solicitor and his client, in order to elicit from the client that information which the solicitor has always been considered liable to reprobation for disclosing, and which the Court always prevents him from disclosing if applied to in time, and the concealment of which is the privilege of the client, not of the solicitor. If, therefore, a distinction can be drawn between this case and *Lord Walsingham v. Goodricke*, I shall not hesitate to follow the inclination of the learned Judge's mind in that case, and hold these documents to be within the privilege. I think that the distinction is, that the whole question in that case was not a question upon the title, but whether there had been a contract or not, and the documents in question passed at a time when no one was apprehending (which is the word that seems best to suit this case) any dispute, and the contract had never been concluded; but in this case the consultations were between a man and his solicitor as to a proposed conveyance to him, in order to make himself quite secure. It was from a general apprehension against the whole world, and in order to secure himself; and the doubts and fears so suggested are just those which this Court ought to protect him from having to disclose. I think that this makes a sound distinction between the present case and *Lord Walsingham v. Goodricke*, and that I may grant this protection, notwithstanding the dicta in *Hawkins v. Gathercole*, 1 Sim. N.S. 150, which in *Warde v. Warde*, ib. 18, the same learned Judge seems not to have acted upon, possibly on account of the very distinction which I am now making, that there was an apprehension of a dispute, though there was no actual dispute then existing. That decision was overruled by Lord Truro, on the ground that the solicitor had acted in the transaction for both the husband and wife as one and the same person; but he left untouched the other point. Here, where the consultation has been against all possible claimants who may hereafter dispute the title, I think I am authorised to say that these documents are privileged."

*Manner v. Dix*, 1 Kay & J. 461.

## VACATION PRACTICE AT THE JUDGES' CHAMBERS.

*Eschequer Barons' Chambers, July, 1855.*

THE following Regulations for transacting the business of these Chambers will be strictly observed till further notice:—

Original summonses only to be placed on the file.

Summonses adjourned by the Judge will be heard at 11 o'clock.

Summonses of the day will be called and numbered at a half past 11 o'clock.

One summons only will be allowed in the Judge's Room at the same time.

All long orders to be left that they may be ready, on being applied for the following day.

Counsel will be heard at half-past 1 o'clock. The name of the cause in which counsel are engaged, to be put on counsel file.

Affidavits in support of *ex parte* applications for Judges' orders (except those for orders to hold to bail) to be left the day before the orders are to be applied for, except under special circumstances; such affidavits to be properly endorsed with the names of the parties, the nature of the application, and the names of the attorneys.

All affidavits produced before the Judge, must be properly endorsed and filed.

Acknowledgments of deeds will not be taken before 1 o'clock.

## SATURDAY HALF-HOLIDAY.

A Correspondent urgently inquires whether any and what steps have been taken since our last notice of the subject, for promoting the relief to our hard-worked brethren, by closing the legal workshops at two o'clock on Saturdays.

In answer to this inquiry we have to state, that a meeting was held at the Law Institution a few days ago, at which it was resolved to convene a public meeting for the purpose of determining the course to be pursued for effecting this desirable object. We understand that an application will be made to the Lord Mayor to allow a meeting to be held at the Mansion House, in order that the opinion of the public may be taken on the expediency of the measure. If the suitors are willing to suspend litigation for a few hours once a week, the lawyers and their clerks may, of course, close their chambers and betake themselves to the Crystal Palace or elsewhere, as may suit their inclination. It is a question quite as much for the Public as the Profession.

## NOTES OF THE WEEK.

### MEMO OF THE LORDS JUSTICES' COURT.

THE Lords Justices had fixed their day of rising for the Long Vacation to be the 4th day of August, but in consequence of one of the Vice-Chancellors having informed their lordships that their intention had originally pointed

at the 3rd, they had determined that it should be that day.

### JUNIOR COUNSEL, SETTLEMENT MINUTES OF DECREES.

In the case of *Perry v. Walker*, the Lords Justices made variations in the decree in favour of the appellant, and desired the junior counsel at once to arrange the minutes, and to let the Court hear them read that day. Lord Justice Knight Bruce said the practice used to be, never, except on a special application, to allow the junior counsel to leave the Court, or the next cause to be called on, until the minutes were settled. It was only since Sir Thomas Sewell's time this practice had been relaxed. The Lord Justice Turner also observed nothing would tend more to expedite business than that the junior counsel should not leave the Court until they had signed the minutes of the proposed decree.

Mr. Cole and Mr. Goren, the juniors in the case, then proceeded to settle the minutes, and at three o'clock returned into Court, saying that the minutes had been carefully settled, and that they had signed them.

Their Lordships expressed their sense of the service rendered by the learned counsel, and of the saving of time that would result from what had been done.—From the *Morning Herald*.

### INCONVENIENCE OF JURORS' ATTENDANCE.

At the sittings at Nisi Prius, at Guildhall, on the 7th July, before Mr. Justice Coleridge and Common Juries, a juror asked his Lordship to release him for the day; it was Saturday, and that was more valuable to a tradesman than all the other five days of the week. Several other jurors said they were similarly situated.

Mr. Justice Coleridge said he was aware of the great inconvenience it was to jurors to attend, and he was sorry that he could not assist them. He very much wished that persons in their position would endeavour to get the jury law altered, but it was not generally known that what were termed the upper classes were equally liable to serve on common juries with themselves;—their being special jurors did not exempt them from serving on common juries. They were, in truth, liable to serve on both special and common juries, and the burden ought to be much more equally distributed.—From the *Times*.

### NEW IRISH QUEEN'S COUNSEL.

The following gentlemen have been made Queen's Counsel in Ireland:—

Mr. Thomas De Meleyns, called to the Bar in Hilary Term, 1831.

Mr. Joshua Clarke, called to the Bar in Easter Term, 1836.

Mr. Daniel Sherlock, called to the Bar in Hilary Term, 1837.

They are all members of the Munster Bar.—From the *Morning Chronicle*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lord Chancellor.

*In re Franklin.* June 30; July 4, 1855.

TRUSTEES' ACT, 1850.—TRUSTEES WITH POWER OF SALE.—DEATH AND LUNACY.

*One of two trustees appointed under a testator's will with powers of sale, died, and the other became insane.*

*Quære, whether the power of sale extended to new trustees to be appointed under the 13 & 14 Vict. c. 60, and the 15 & 16 Vict. c. 55?*

*A petition for the appointment of the two new trustees was directed to stand over in order to bring before the Court the heir-at-law and next of kin of the testator.*

THIS was an application under the 13 & 14 Vict. c. 60, for the appointment of two new trustees upon the death of one and the lunacy of the other, who were appointed under the will of the testator. It appeared that the testator empowered the trustees to sell the real estate upon the death of his wife to whom he gave a life interest; and the question now raised was, whether this power would extend to the new trustees.

By the 13 & 14 Vict. c. 60, s. 3, it is enacted, that "when any lunatic or person of unsound mind shall be seised or possessed of any lands upon any trust or by way of mortgage, it shall be lawful for the Lord Chancellor, intrusted by virtue of the Queen's Sign Manual with the care of the persons and estates of lunatics, to make an order that such lands be vested in such person or persons in such manner and for such estate as he shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the lands in the same manner for the same estate."

And by s. 32, that "whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable, so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court of Chancery to make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees."

And by the 15 & 16 Vict. c. 55, s. 9, "in all cases where it shall be expedient to appoint a new trustee, and it shall be found inexpedient, difficult, or impracticable so to do, without the assistance of the Court of Chancery, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or not at the time of making such order."

*Webster* in support.

*Cw. ad. vult.*

The Lord Chancellor said, that the present case did not come within either of the Acts, but that the petition might stand over to bring

the heir-at-law and next of kin before the Court, when an order might be possibly made.

## Vice-Chancellor Kindersley.

*Dew v. Dew.* June 30, 1855.

ADVANCING CAUSE IN PAPER.

*A cause was advanced in the paper where the parties were very poor and in a destitute state.*

THIS was an application to advance this cause, which was number 91 in the list, on the ground that the parties were very poor and in a state of destitution.

*Boyle* in support.

The Vice-Chancellor said, that having regard to the circumstances of the case, the application would be granted, although it was very objectionable to advance causes on the paper, but it was not to be drawn into a precedent.

*Pennell v. Hume.* July 5, 1855.

BANKRUPT LAW CONSOLIDATION ACT.—NOTICE IN SUIT BY ASSIGNEES OF DISPUTING BANKRUPTCY.

*Held, that the notice by a defendant of his intention to dispute in a suit by the assignees the bankruptcy, must be separate, in writing, and specially referring to the matter. It is not sufficient, under the 12 & 13 Vict. c. 106, s. 235, that he insist by his answer that the plaintiffs are under the obligation to establish the validity of the fiat, and that the bankrupt was never a trader.*

THIS suit was instituted to set aside a warrant of attorney, upon which judgment had been entered, together with an assignment of personal, and mortgage of real, property, which had been executed by Lord Huntingtower in November, 1841. It appeared that Lord Huntingtower was made bankrupt in September, 1842, and the plaintiffs were his assignees. The defendant by his answer insisted on the plaintiffs' obligation to establish the validity of the fiat and denying that Lord Huntingtower was ever a trader.

The question was now raised whether this was a sufficient notice of the defendant's intention to dispute the bankruptcy, under the 12 & 13 Vict. c. 106, s. 235, which enacts, that "in all suits in equity, other than a suit brought by the assignees for any debt or demand for which the bankrupt might have sustained a suit in equity had he not been adjudged bankrupt, and whether at the suit of or against the assignees, no proof shall be required at the hearing of the petitioning creditor's debt, or of the trading or act of bankruptcy respectively, as against any of the parties in such suit, except such parties as shall within 10 days after rejoinder give notice

in writing to the assignees of their intention to dispute some and which of such matters."

*Swenson, Baily, and G. S. Law* for the plaintiffs; *Glasse and W. H. Terrell* for the defendants.

*Cur. ad. vult.*

The Vice-Chancellor said, that the question turned on the construction of ss. 233<sup>1</sup> and 235 of the Act. It appeared that this was not a suit by the assignees in respect of a matter for which the bankrupt could have maintained a suit, and that it therefore came within the latter section. The notice, however, of the defendant was not such as was required by the Act, inasmuch as it should be separate, in writing, and specially referring to the matter. The plaintiffs were entitled to an account of the property sold by the defendant.

*Buparte Dean and Chapter of Ely.* July 6, 1855.

INVESTMENT OF PURCHASE-MONEY OF LAND IN REDEMING LAND TAX.—TITLE.

*Order for investment of the purchase-money of lands taken by railway company in redeeming the land tax on other property, although the title thereto was a possessory right for 50 years in the former purchasers, whose executors could produce none other.*

*Premdergast* appeared in support of this petition for the payment out of Court of the purchase-money of certain lands belonging to the Dean and Chapter of Ely, and taken by a railway company, and for its investment in redeeming the land tax on other property belonging to them. It appeared that they had paid the land tax for 50 years to the former purchasers thereof, and subsequently to the executors of the survivor, but who could show no other title than such possessory one for 50 years.

The Vice-Chancellor made the order as prayed.

*In re Ford's Charity.* July 6, 1855.

PETITION FOR APPLICATION OF SURPLUS CHARITY INCOME TO SCHOOL-HOUSE.—PRACTICE.

Held, that the sanction of the Charity Com-

<sup>1</sup> Which enacts, that "if the bankrupt shall not (if he were within the United Kingdom at the date of the adjudication) within 10 days after the advertisement of the bankruptcy in the *London Gazette*," &c., "have commenced an action, suit, or other proceeding to dispute or annul the fiat, or the petition for adjudication, and shall not have prosecuted the same with due diligence and with effect, the *Gazette* containing such advertisement shall be conclusive evidence in all cases as against such bankrupt, and in all actions at law or suits in equity brought by the assignees for any debt or demand for which such bankrupt might have sustained any action or suit had he not been adjudged a bankrupt," &c.

missioners must be obtained for the application by the trustees of a portion of the surplus income of a charity in the building of a school-house—such object being new.

THIS was a petition for the application by the trustees of the above charity of a portion of the surplus income in the building of a school-house.

*Freeling* in support; *Wickens* for the Attorney-General; *Speed* for one of the trustees.

The Vice-Chancellor said, that as the building of a new school-house would be a new object, the sanction of the Charity Commissioners must be first obtained; and the petition was ordered to stand over accordingly.

*Ruck v. Barworth.* June 6, 1855.

APPEARANCE OF INFANT IN INDIA COURT.—POWER OF ATTORNEY TO SOLICITOR THERE.

*Order made on petition authorising the guardian of an infant, residing in India, to execute a power of attorney to a solicitor of a Court there, to enter an appearance in a suit therein, and to do other acts on his behalf in reference thereto.*

THIS was a petition for an order authorising the guardian of an infant, residing in India, to execute a power of attorney to a solicitor of the Court of Dewanpore, to enter an appearance in a suit therein, and to do other acts on his behalf in reference thereto.

*Glasse* in support.

The Vice-Chancellor said that as this appeared the usual practice in the India Courts, although not so here, the order would be made as prayed.

*Vice-Chancellor Stuart.*

*Shaw v. Fisher.* July 5, 1855.

TRANSFER OF RAILWAY SHARES TO PURCHASER'S NOMINEE.—VENDOR'S RIGHT TO RECOVER CALLS.

*The holder of 25 shares in a railway company sold to the defendant, who afterwards re-sold to C., to whom the plaintiff executed a transfer at the defendant's request, but the defendant paid the purchase-money to the plaintiff. C. had not accepted the transfer nor been registered, and the plaintiff was accordingly obliged to pay several calls: Held, that he could not proceed against the defendant, but that he must look to C. to be indemnified.*

It appeared that the plaintiff had sold 25 shares, of 30*l.* each, in the Newry and Enniskillen Railway Company to the defendant for 1*l.* 8*s.* 6*d.*, and that the defendant afterwards re-sold to a Mr. Carmichael, paying the purchase-money to the plaintiff, who executed a transfer to Mr. Carmichael at the defendant's request. Mr. Carmichael, however, had never accepted the transfer, nor procured his registration as a shareholder, and the plaintiff was accordingly obliged to pay several calls which



were afterwards made, and he now filed this bill to enforce specific performance of the contract entered into by the defendant, and for repayment of the calls. The Vice-Chancellor Knight Bruce directed an inquiry whether the plaintiff could make out a good title, and the Master reported adversely, and the case now came on upon further directions.

*Makins and Hallett for the plaintiff.*

The Vice-Chancellor (without calling on Wigram and Grease for the defendant) said, that the plaintiff had, by executing the transfer to Carmichael, put an end to the priority of contract previously existing between himself and the defendant, and that he must look to Carmichael to be indemnified. The bill was therefore dismissed with costs.

*Lillie v. Wilson.* July 7, 1855.

CHARITABLE BEQUEST.—CY PRES.—WHERE TWO SOCIETIES.

The testator bequeathed 100*l.* to the "*Foreign Missionary Society.*" It appeared that there were two Missionary Societies—the London and the Colonial—and that the testator subscribed to the former: Held, that it was entitled to the bequest.

THE testator, by his will, gave a sum of 100*l.* to the "*Foreign Missionary Society.*" It appeared, however, that there was no such society, but that there were the London Missionary Society and the Colonial Missionary Society, and that he subscribed to the former.

Bacon, Malins, Elmsley, and Goodeve for the several parties.

The Vice-Chancellor held, that the London Missionary Society was entitled to the bequest.

*Vice-Chancellor Stuart.*

*In re Brunton's Trust.* July 7, 1855.

CHARITABLE BEQUEST.—CY PRES.—REFERENCE TO ATTORNEY-GENERAL.

A testator gave a sum of 50*l.* to the "*Governors and Trustees for the time being of the Institution in Hoxton Square, for the relief and support of poor clergymen's children.*" There was no such society: Held, that it could not be applied *cy pres*, and the trustees authorised to pay it to "*the Corporation of the Sons of the Clergy,*" without the sanction of the Attorney-General; and as the reference for the usual inquiries to him would be expensive, and the amount was so small, it was ordered to be paid back out of Court to the executors who had paid it in, under the 10 & 11 Vict. c. 96, for the purposes of administration, without any direction.

THE testator in this case bequeathed by his will, a sum of 50*l.* to "*the Governors and Trustees for the time being of the Institution in Hoxton Square, for the relief and support of Poor Clergymen's Children.*" It appeared that there was no such institution, and the executors paid the money into Court under the 10 & 11 Vict. c. 96. This petition was now

presented for payment out to the "*Corporation of the Sons of the Clergy.*"

*Wickens, Simpson, and Boyle* for the several parties.

THE Vice-Chancellor said, that as the doctrine of *cy pres* could not be applied, and the trustees authorised to pay over the money as asked without the sanction of the Attorney-General, and that the reference to him with the usual inquiries would be expensive, and the fund was very small, there was no alternative but to order payment back to the executors, for the purposes of administration, but without any direction.

*Barrow v. Barrow.* July 9, 1855.

COSTS OF TRUSTEES' ADMISSION TO COPY-HOLDS.—FINE.

UPON the marriage of the defendant and the plaintiff, who was then an infant, the former covenanted with the trustees of his marriage settlement within one month after the plaintiff should attain 21, "*at his own proper costs and charges,*" to surrender according to the custom certain copyhold premises to which the plaintiff was entitled, to the end that the trustees might, "*at the costs and charges*" of the defendant, be admitted tenants thereof in trust to apply the rents as the plaintiff should appoint, and in default of and until such appointment to her for her separate use. On their separation, held that the defendant was only bound to pay the ordinary fees of admittance, and not the one year's fine payable to the lord on the trustees' admission by the custom of the manor.

UPON the marriage of the defendant and his wife (the plaintiff) who was then an infant, the former covenanted with the trustees of his settlement, within one month after the plaintiff should attain 21, "*at his own proper costs and charges,*" to surrender according to the custom certain premises to which she was entitled, to the end that the trustees might, "*at the costs and charges*" of the defendant, be admitted tenants thereof, in trust to apply the rents as the plaintiff should appoint, and in default of and until such appointment to her for her separate use. On their separation in 1853, the plaintiff insisted on the defendant performing the covenant.

*W. M. James and Fowler* for the plaintiff.

*Bagshawe, Q. C.,* for the defendants, cited *Graham v. Sims*, 1 East, 632.

*Bagshawe, jun.,* for the surviving trustees of the settlement.

THE Vice-Chancellor said, that the defendant was only liable to pay the ordinary fees of admission, but not the fine of one year's value, which was taken by the lord according to the custom of the manor. The covenant was complete when the trustees were placed on the rolls of the Court, and the act was perfected before the fine became payable. It must therefore be declared not to be included in the costs of the admission.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—"Still attorneyed at your service."—*Shakespeare*

SATURDAY, JULY 21, 1855.

### THE REMAINING LAW BILLS IN PARLIAMENT.

WE are now in all probability, within three weeks or thereabouts of the close of the Session, and therefore resume our brief review of the legislative measures which remain for discussion in one or both of the Houses of Parliament.

1st. We shall notice those which more or less concern the practitioners in the Superior Courts of Law and Equity.

The *Bills of Exchange and Promissory Notes* Bill, having passed the House of Commons, was read a second time last week in the House of Lords on the motion of Lord Brougham, who said that a Bill with the same object had been passed by their Lordships last Session, and perished in the massacre in the other House. This Session it had been examined by a Select Committee of the House of Commons together with the Bill of Mr. Keating. The principle of both was, that where a person had signed his name to an acceptance and bound himself to pay on a certain day, he ought, if he failed, to be subject to an execution against his goods, instead of dragging his creditor into a Court and exposing him to the cost, delay, and vexation of a law suit. The Select Committee of the Commons had compounded the two Bills together, and the present Bill would undoubtedly be very beneficial so far as it went. And on Tuesday last, his lordship, in moving that this Bill be committed, intimated that he should at a future stage move his amendments, not with the hope of having them passed, but by way of protest, that he still abided by his own measure, of which this was only a part, although certainly a great part. He did not

wish to see the dotting of an "i" or the ticking of a "t" altered, because he knew that the enemies of the Bill in the other House would immediately move that the Lord's amendments be taken into consideration that day three months, and so defeat the measure.

The Despatch of *Business in Chancery* Bill, which was passed by the House of Lords, still lingers in the lower House, mainly, we believe, on account of the clause restricting the administration of oaths, but also because, in the opinion of several influential persons, the power to increase the number of junior clerks should be extended to chief clerks,—the business at the Judges' Chambers having largely increased, and it being probable that it will be still further extended.

Of the *Limited Liability* Partnership Bill, we wrote at large last week; and have now only to add that the 19th instant was fixed for re-considering the Bill as amended in Committee. We trust that, notwithstanding the lateness of the Session, we shall obtain at least an instalment of the proposed amendment of the law.

The *Bills of Lading* Bill, which originated in the Commons, now stands for second reading before the Lords: it proposes *inter alia* to provide for the right of suit in respect of goods consigned or mentioned in bills of lading; but without prejudice to the right of stoppage *in transitu*.

A new Bill has just been introduced in the House of Commons, on the one hand for giving costs in *Crown suits* where the proceedings are successful, and on the other subjecting it to costs where unsuccessful: thus assimilating the Law of Costs in Crown proceedings to those between sub-

ject and subject. This is manifestly just and right, but the amendment appears to be confined to matters relating to the Revenue.

2nd. There are several Bills in progress relating to the Law of Property. Amongst these are the "Leases and Sales of *Settled Estates*," authorising the Courts of Chancery to grant powers to Trustees and Tenants for Life to sell or demise property which can now only be effected by the costly means of an Act of Parliament. The Leeds Law Society have pointed out a defect in the Bill by which the money received on a sale is required to be laid out in the redemption of land tax, the discharge of incumbrances, or the purchase of other estates to be settled in like manner; but there is no power to invest the money in consols. In many cases such investment would be beneficial both to the tenants for life and those in remainder. The Bill has passed the House of Lords, has been read a second time in the Commons, and referred to a Select Committee, where we presume this suggestion will be duly considered.

In this department of legislation may be mentioned the *Mortmain* Bill, which has passed the House of Commons, but will have to go through the ordeal of its several stages in the Upper House. The *Charitable Trusts* Bill, which originated with the Lords, has for some time been waiting for a second reading in the Commons. A Bill for extending the powers relating to the *drainage* and other improvements of land has rapidly passed the Upper House.

3rd. Next may be noticed the several Bills for the improvement of the Criminal Law—on which subject a large share of attention is bestowed by the Legislature every Session. The *Assizes and Sessions* Bill, which was introduced by the Government and passed the Lords, stands for second reading in the Lower House, and will, we understand, be pressed forward. The other Bills, in this branch of jurisprudence, are the *Grand Juries* Bill, the *Justices of the Peace* Bill, and the *Public Prosecutors* Bill. Some valuable remarks on the Criminal Law Bills will be found in Mr. Warren's Charge to the Grand Jury of Hull, in a subsequent page.

4th. To complete the list of such Bills as appear to deserve attention, though not directly affecting the members of the Profession, we may mention the *Metropolitan Buildings and Local Management* Bills, and those relating to the Public Health and the Removal of Nuisances.

5th. Amongst the "massacre" of Bills which takes place as the Session draws to a close, may be recorded, with some satisfaction, the Executor, Trustee, and Receiver Joint-Stock Company Bill, which was lodged as a private Bill last December, steered its course through the House of Commons, even weathered the Standing Order Committee in the Lords; but was stranded prior to its second appearance before their Lordships.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### JURISDICTION OF THE STANNARY COURT AMENDMENT.

18 VICT. c. 32.

Process in case of mines of mixed minerals; s. 1.

Interpretation of terms; s. 2.

As to suits by pursers, &c., for contribution against non-resident shareholders; s. 3.

Plaintiff may join several adventurers in one petition, &c.; s. 4.

As to suits by creditors for payment of debts of adventurers in a mine; s. 5.

As to suits for account between adventurers; s. 6.

Process in suits against non-resident defendants; s. 7.

Service of process out of Stannaries; s. 8.

As to execution of judgments and decrees of the Court of the Vice-Warden; where such judgments cannot be conveniently enforced, Superior Courts may issue process for recovery of amounts due on the same; s. 9.

Execution of decrees, &c., in equity suits in or out of Stannaries; s. 10.

Interpleader in equity; s. 11.

Adjudication to be final; s. 12.

Upon application by registrar, &c., action may be stayed; s. 13.

Freehold, &c., not to be adjudicated upon without consent; s. 14.

Ejectment in the Stannaries; s. 15.

Summary suits for small debts extended to torts; s. 16.

Removal of certain causes from the County Court; s. 17.

Pleading to jurisdiction; s. 18.

Power of registrar on interlocutory applications; s. 19.

Power for vice-warden, with consent of parties, to refer cases to arbitration; s. 20.

Power of vice-warden to hold his Court at any place within the Stannaries for certain purposes; s. 21.

Production of lists of shareholders in mines, 7 & 8 Vict. c. 110; s. 22.

Power to make or adopt rules, orders, and practice of Superior Courts of Law or Equity; s. 23.

Provision for illness or accidental absence of vice-warden; s. 24.

Allowances to be made on auditing the registrar's accounts; s. 25.

Regulation of appeals; s. 26.

As to levying and application of fines; s. 27.

Punishment of frauds by miners in Devonshire; s. 28.

Vice-warden to be qualified to act as a justice of the peace in the county; s. 29.

Parts of Acts repealed; s. 30.

Law clerk of the Duchy of Cornwall to act as attorney or solicitor in all Courts; s. 31.

Stannaries of Cornwall and Devon to be united as to jurisdiction; s. 32.

The vice-warden to sit in Devonshire when sufficient funds shall be provided for such sitting; s. 33.

Collector in Devonshire; s. 34.

Jurors to be qualified as at assizes; s. 35.

No sittings in Devon till Duchy Council or Commissioners shall direct; s. 36.

Assessment of mines and minerals in Devon; s. 36.

Commitment of prisoners in Devonshire; s. 37.

Provision for the eventual establishment of a separate Court in Devonshire; s. 38.

The following are the Title and Sections of the Act:—

An Act to amend and extend the Jurisdiction of the Stannary Court.

[15th June, 1855.]

Whereas it is desirable to explain and amend the Acts heretofore passed for the administration of justice in the Stannaries, and to make the jurisdiction and process of the Court of the Vice-Warden more efficient, and to regulate appeals from the vice-warden: be it enacted as follows:—

1. Where any mine or sett within the stannaries shall be worked by the same adventurers not only for metallic minerals within the jurisdiction of the Court, but also for non-metallic minerals found in the same mine or sett, or intermixed with metallic minerals, the entire mine and works and products thereof shall be taken to be within the cognizance of the vice-warden as if the same had wholly consisted of metallic minerals, and the process of the Court shall extend to and be exercised over the same, and all the machinery and materials thereon, as in the case of mines of metallic minerals, and the mineral called plumbago or black-lead is hereby declared to be a metallic mineral.

2. The words "mine" and "mineral" and

"miner," when used in this Act, or in any pleadings, process, or proceedings in the said Court, shall, unless otherwise explained or qualified, be respectively presumed and taken to mean a metallic mine or mineral within the jurisdiction of the said Court, and a miner in some mine, work, or adventure within the same jurisdiction, and having privilege to sue or be sued in the said Court; and the words "County Court" shall in this Act mean any Court established under the provisions of the Act passed in the Session of Parliament holden in the 9 & 10 Vict. c. 95, and also the Court held under the provisions of "The London (City) Small Debts Extension Act, 1852."

3. In suits on the equity side of the Court of the vice-warden, prosecuted according to custom by the purser or other principal agent of the adventurers in a mine in the stannaries against an adventurer or his personal representatives for contribution to calls or to the expenses of working such mine or adventure, it shall be lawful for the vice-warden, upon special application in that behalf, to order that service of process on the defendant in any part of England or Wales to compel appearance and answer shall be sufficient service, although he may not then be personally within the jurisdiction of the said Court; and upon proof of such service and the default of the defendant to appear and answer the petition within the time prefixed by the summons, it shall be lawful for the plaintiff to enter an appearance for the defendant, and thereupon such proceedings shall be had in the suit, and such orders and decree made, as if the process had been duly served on the defendant within the jurisdiction of the Court; and if upon sale of the shares or interest of the defendant in the mine or adventure according to custom the proceeds of the sale shall be insufficient to satisfy the debt of the defendant, costs of suit, and expenses of sale, it shall be lawful to levy the same or the residue thereof in the manner hereinafter provided for enforcing decrees and orders on the equity side of the Court; and after appearance so entered, all notices, orders, summonses, warrants, and other process in the suit shall be deemed to be well served if served on the defendant wheresoever he shall then be in England or Wales.

4. In all such suits against adventurers for contribution, it shall be lawful for the plaintiff to join several adventurers in one petition for recovery of their several contributions, and for the Court to make one decree for payment and one order for sale of shares, and to enforce payment by separate process of execution against each defendant, if need be; and where the defendants or any of them shall put in separate answers, it shall be lawful for the Court to direct that all or any of the matters in issue be heard and tried at the same time; provided that nothing herein contained shall be construed to abridge or affect the right of the plaintiff in such a suit, as now exercised, to proceed against adventurers residing or being out of the jurisdiction of the Court upon a ser-

vice on the mine itself, substituted by order of the vice-warden for personal service; but in such case the plaintiff shall not be entitled to any other or further remedy for recovery of the arrears of contribution in the Vice-Warden's Court from a defendant so served than he had before the passing of this Act.

5. In suits on the equity side of the said Court by creditors prosecuted according to custom against the purser or other principal agent of the adventurers, or against one or more of the adventurers in a mine in the stannaries, to enforce payment of their demands by sale of the ores, machinery, materials, and effects for the time being belonging to the adventurers, and being upon or about the mine or fraudulently removed therefrom, it shall be lawful for the vice-warden, upon special application in that behalf, to order that service of process on the defendant in any part of England or Wales to compel appearance and answer shall be sufficient service, although he may not then be personally within the jurisdiction of the said Court; and upon proof of such service and of the default of the defendant to appear and answer the petition within the time prefixed by the Court, it shall be lawful for the plaintiff to enter an appearance for the defendant, and thereupon such proceedings shall be had in the suit, and such decrees and orders made, as if the process had been duly served on the defendant within the jurisdiction of the said Court; and any adventurer shall, upon application to the vice-warden or registrar, be let in to defend the suit, either separately or jointly with the other defendant, within 20 days after the filing of the petition, or within such other time as the vice-warden shall allow; and where several creditors of the same adventurers shall sue separately for payment and sale, the vice-warden shall have power to consolidate the suits in such way as shall seem to him necessary or expedient for the convenient trial of the matters in issue in the said causes and for the saving of expense to the suitors; and all further notices, orders, summonses, warrants, and other process in the cause or consolidated causes shall be deemed to be well served if served on the defendant in any part of England or Wales; and if upon sale of the ores, machinery, materials, and effects in any such suit the proceeds of the sale shall be found insufficient to satisfy the debts of the plaintiff or plaintiffs and of the other creditors who shall be admitted according to custom to prove their debts before the registrar of the Court and the costs of suit and expenses of sale, it shall be lawful for the registrar, at the instance of the plaintiff in the suit or of any creditor so admitted to proof, and by permission of the vice-warden on an application by the plaintiff or creditor stating the amount of debts remaining unsatisfied and the number of adventurers, whether within or out of the jurisdiction, so far as they can be ascertained by the applicant, to proceed to apportion the amount of debts, costs and expenses remaining unsatisfied rateably among

all the adventurers or persons liable to contribute to the payment of the said debts, whether they be within the jurisdiction or elsewhere, according to the number of shares or the interest of each in the said mine or adventure; and it shall be competent for the registrar to call for, and by summons and attachment within the stannaries or subpoena under the seal of the Court to enforce, production before him of the cost-book or books, lists of shareholders, accounts, bills, resolutions of the adventurers or committees thereof, and all other books, papers, and documents of the adventurers relating to the mine or the management thereof, and by like summons and attachment or subpoena to call before him and to examine the purser, managers, or other principal agents of the adventurers, whether the several documents above-mentioned or the persons so called before him be within the stannaries or elsewhere in any part of England or Wales, and to make a list of all the persons so liable to contribute at the time of filing the petition or their personal representatives, with the amount apportioned upon each; and when the registrar shall have made such list and apportionment, a copy of the list shall be sent to the account-house of the mine, or the principal office or place of business of the adventurers, and notice shall be served on each person named in the list of the sum charged upon him, and a reasonable time, to be fixed by the registrar according to the circumstances of each case, shall be allowed to him to dispute the apportionment before the registrar, who shall hear and determine all objections thereto; and when the list shall have been finally settled by the registrar, he shall report thereon generally to the vice-warden, and if the report shall be confirmed upon exception or otherwise there shall be a decree for payment in conformity with the said report, and the several sums so apportioned and charged upon each contributory shall in and by the said decree be made payable to the registrar, who shall forthwith demand payment thereof, and thereupon it shall be lawful for the said plaintiff or creditor, at whose instance the apportionment shall have been made and decree obtained, after such demand and a refusal of payment, to proceed to levy from each contributory in the said list the sum therein charged upon him in the manner hereinafter provided for enforcing decrees and orders on the equity side of the said Court, and for this purpose the said plaintiff or creditor shall be deemed to be a party entitled to the benefit of the said decree within the intent and meaning of the said provision, and the sums received or levied shall be forthwith paid over by him to the registrar, who shall deduct therefrom and allow to the party who shall have so received or levied the same his reasonable costs and expenses in and about the said apportionment and obtaining the said decree and levying the moneys so payable under it, and shall distribute the residue rateably among the several creditors in the proportion of the debts remaining due to them respec-

tively : provided always, that all notices and demands required by this Act to be served on or made upon adventurers and other persons named in the registrar's list as contributories shall be deemed to be sufficiently served if sent by post prepaid, addressed to the party at his last known address ; unless the registrar shall order that the same shall be served in some other way, in which case service shall not be sufficient unless it be in conformity with such order.

6. In suits on the equity side of the said Court for an account as between adventurers in mines in the stannaries, it shall be lawful for the Court, upon special application in that behalf, to order that service of process in any part of England and Wales to compel appearance and answer shall be good service on any adventurers or their personal representatives, or others who may be necessary parties to such suit, although they may not then be personally within the jurisdiction of the said Court ; and upon proof of such service, and of the default of any person so served to appear and answer the petition within the time prefixed by the summons, it shall be lawful for the plaintiff or plaintiffs to enter appearances for the persons so served, and thereupon such proceedings shall be had in the suit, and such orders or decrees made, as if the process had been duly served within the jurisdiction of the Court, and the orders and decrees so made shall be binding on all adventurers and others so served ; and if the final decree shall be for payment of money or costs, payment thereof shall be enforced in the manner hereinafter provided ; and after appearance so entered all notices, orders, summonses, warrants, and other process in the suit shall be deemed to be well served if served in any part of England or Wales ; and in all such suits where any adventurer holding a share in a mine or adventure cannot be found, or is deceased and no one can be found who has administered to his estate and effects, then it shall be sufficient by leave of the Court to substitute for regular service a service on the mine in the usual way, or at the principal office or house of business of the adventurers, whether within the stannaries or elsewhere in England or Wales, and notice of such substituted service shall be addressed by post to the last known address of the said adventurer, except in case of his decease, and thereupon decrees or orders of the Court in the suit shall be binding on such adventurer or his representatives, and those claiming under him, as in case of regular service.

7. In suits commenced on the equity side of the said Court for causes relating to mines and minerals in the stannaries, or to shares, interests, or adventures therein, whereof the said Court has cognisance, in which it may be necessary or expedient to sue or to join as defendant a person holding or claiming to hold any share or interest in an adventure in mines or minerals worked within the stannaries, or being an agent of the said adventurers, who cannot be found within the jurisdiction of the

said Court ; and in all cases where any person who shall have commenced any suit or entered an appearance in any suit in the said Court, or shall have come in as creditor, claimant, or purchaser, or otherwise submitted to the jurisdiction thereof, cannot, by reason of his person or goods being out of the said jurisdiction, be made amenable to the process of the Court ; and in all cases where any party to such suit shall have died or become bankrupt or insolvent, and his personal representatives or assignees, or any of them, who may be necessary parties to the continuance of the suit, shall be out of the said jurisdiction, it shall be lawful for the Court, upon special application in that behalf, to order that service of any notice, order, summons, warrant, or other process shall be deemed good service on any such person, representative, or assignee respectively in any part of England or Wales, and, if need be, to order an appearance to be entered for the person served ; and thereupon it shall be lawful to take such proceedings and to make such order or decree as if the service had been made within the said jurisdiction.

8. Where service of notices, orders, summonses, warrants, or other process in causes pending in the Vice-Warden's Court may, under this Act or otherwise, lawfully be made in a place out of the jurisdiction of the said Court, it shall be lawful for the said Court, or for parties to suits therein, to send the same to the high bailiff of the County Court in the district of which such place may be, together with the lawful fees payable in like cases for service of similar process in the County Court, and thereupon the high bailiff shall serve or cause to be served the same, as if it had been issued out of a County Court, and such service shall or may be proved as in case of County Court process.

With respect to the execution of judgments and decrees of the Court of the Vice-Warden, be it enacted as follows :—

9. In actions commenced therein on the common law side of the Court, where judgment shall have been duly recovered in a cause whereof the said Court has cognisance, but which cannot be conveniently or effectually enforced by the ordinary process of that Court within the jurisdiction thereof, it shall be lawful for any one of the Superior Courts of Common Law at Westminster, or for any Judge thereof, upon application of the party entitled to the benefit of such judgment, and production of a certificate from the registrar of the Court of the vice-warden under the seal of the Court of the judgment so recovered, and a satisfactory affidavit of the ground of the application, to cause process to issue and proceedings to be taken for the recovery of the amount due on the judgment, including the costs of the certificate and of the application, in the same manner as upon a like judgment recovered in an action commenced in the Superior Court ; and it shall not be necessary for this purpose, or for any other purpose, that the record of any judgment in the vice-warden's

Court shall be engrossed on parchment or enrolled; and where the debt or damages recovered by judgment of the Court of the vice-warden, or sought to be recovered in actions commenced either by writ, plaint, or other legal procedure, according to the practice of the said Court, shall not exceed 50*l.*, and the judgment of the Court cannot be conveniently or effectually enforced within the jurisdiction of the said Court, it shall be lawful for the party entitled to the benefit of the judgment to sue out a writ of execution, and to send the same to the clerk of any County Court within the district of which the judgment debtor or his goods and chattels shall then be or be believed to be, with a warrant thereunto annexed, under the hand of the registrar and seal of the Court of the vice-warden, requiring execution of the same, and with the fees lawfully payable in like cases for execution of such a writ in the County Court; and thereupon the said clerk shall cause the same to be executed by the high bailiff of the County Court in due course of law, as if the same had been issued by the Court of which he is high bailiff, and the said bailiff shall have the same powers and protection as if he were executing the process of such County Court, and shall make his return to the clerk of the said Court, and pay over to him the amount levied, if any; and the clerk shall forthwith certify the said return, and remit the amount so paid, less the costs of making such levy according to the practice of the County Courts, to the party prosecuting the writ; and the Judge of the said County Court shall have and exercise the same power and authority over the clerk and high bailiff, and shall have power to adjudicate upon summons of interpleader in case of adverse claims to goods taken in execution, as if the execution had been under the warrant of his own Court.

10. All decrees and orders made in causes on the equity side of the Court of the vice-warden, whereof the said Court has cognizance, for payment of any sum or sums of money, costs, charges, or expenses, shall and may be enforced by a writ or writs of *fiat facias* or *capias*, within the limits of the jurisdiction of the said Court, which writs shall be in the form, as near as may be, of the like writs issued to enforce decrees or orders for payment of money made by the High Court of Chancery, and be executed in like manner by the bailiffs of the vice-warden's Court; and where any decrees or orders, whether for payment of money or otherwise, cannot be conveniently or effectually enforced by the ordinary process of the Court of the vice-warden within the jurisdiction thereof, it shall be lawful for the High Court of Chancery, or for any Judge thereof, sitting in Court or at Chambers, upon the application of a party entitled to the benefit of such decree or order, and production of a certificate from the registrar of the Court of the vice-warden under the seal of the Court of the said decree or order, or of such part thereof as cannot be so enforced as aforesaid, and a satisfactory affidavit of the ground

of the application, to make the said decree or order, or so much thereof as cannot be enforced, a decree or order of the High Court of Chancery; and thereupon such decree or order, or such part thereof as aforesaid, shall and may be enforced by such proceedings and writs as would or might have been taken or issued if the same had been originally made by the High Court of Chancery, and all the reasonable costs of and consequent upon such certificate and application shall and may be recovered as if the same had been and were part of such decree or order; and where the said decree or order of the vice-warden is for payment of a sum or sums of money not exceeding in the whole the sum of 50*l.*, it shall be lawful for the party entitled to the benefit of the said decree or order to enforce payment thereof in the manner hereinbefore provided in the case of a judgment on the Common Law side of the Court for Recovery of a debt or damages not exceeding the said sum of 50*l.*: Provided that nothing in this Act contained shall affect or prejudice the power of the vice-warden to enforce decrees or orders by process of attachment within the jurisdiction of his Court where the same may be now lawfully exercised, or to order the sales of shares or interests in mines or adventures in cases wherein such sale may now be made by order of the said Court.

11. When any claim is made to or in respect of any goods and chattels, or the proceeds or value thereof, sold or intended to be sold under a customary decree of sale in a mining creditors suit by any landlord for rent or other distrainable demand, or by any other person not being a party to the suit, it shall be lawful for the vice-warden to call upon the claimant by rule or order of the Court to appear in person or by his attorney or agent in support of the same either before the vice-warden himself or before the registrar, and to state the nature and particulars of his claim, who shall thereupon hear the allegations and receive the proofs offered as well by the claimant as by the plaintiff in the suit, and, if the claimant and plaintiff shall agree on the facts of the case, shall then adjudicate upon the claim; and if the said parties shall not so agree, then the disputed facts shall be ascertained by an action or issue to be tried in the vice-warden's Court, in such form as the vice-warden shall direct, and the vice-warden shall then adjudicate upon the claim; or the vice-warden or registrar shall have power, with the consent of the parties so before him, their counsel, attorneys, or agents, to adjudicate upon and dispose of the claim in a summary manner: Provided that in all cases, except in case of summary adjudication by consent, it shall be competent for the registrar, at the request of the said parties, or either of them, to refer the decision of the case to the vice-warden; and the vice-warden shall in all cases of such interpleader make such other rules and orders in the matter of the said claim or adjudication as between the said parties in respect thereof, or of the costs

of the proceedings, as to him shall seem fit and reasonable.

12. The adjudication of such claim, either upon hearing or in default of the appearance of the claimant, shall be final and conclusive between the said parties and all persons claiming by, from, or under them; and the adjudication, and all rules and orders made thereupon, shall have the force and effect of judgments or decrees of the Court, and be enforced accordingly.

13. In cases of interpleader either on the Common Law or Equity side of the Court, upon application by the registrar, bailiff, or other officer of the Court, or of the plaintiff in the original suit, and certificate by the registrar of the proceedings in the Court of the vice-warden, and proof of the service on such claimant of the rule or order calling upon him to appear in support of his claim, any action that shall have been or shall be brought in any Superior or Inferior Court in respect of such claim against any officer of the Court or person acting under his direction, or against the plaintiff in the original suit, may be stayed by the said Court, or any Judge thereof, who shall have power to make such rules and orders touching the costs of the action so stayed as shall seem fit and reasonable.

14. Provided that nothing herein contained shall authorise the vice-warden or registrar to adjudicate upon any claim, either on the Common Law or Equity side of the Court, touching the freehold or inheritance of any person, except by consent of the parties before the Court, and as between and against themselves and those claiming under them.

15. It shall be lawful for the vice-warden to entertain jurisdiction in suits for recovery of the possession of mines within the stannaries, and of buildings, machinery, works, and waters annexed thereto and occupied therewith, on the ground of breach of condition, determination of the sett or lease, or other lawful or customary cause of forfeiture, and also to prohibit the working of any mine in a manner contrary to custom or covenant by injunction in cases and under circumstances in which the High Court of Chancery or the Courts of Common Law at Westminster may now by law enjoin; and the suit for recovery of possession shall be by action of ejectment on the Common Law side of the Court, according to the forms and Procedure established by the Common Law Procedure Act, 1852, so far as they are or can be made applicable to the vice-warden's Court; and it shall be lawful for the vice-warden to cause all necessary writs to be served on the persons in possession or entitled to defend, wheresoever they may then be in England or Wales, and to adopt any of the general rules and orders of the said Superior Courts promulgated from time to time and applicable to the action of ejectment with such variations as the nature and constitution of the Court shall render necessary; and all constables and peace officers within their several jurisdictions shall be aiding the bailiffs of the Court in the execu-

tion of the writ or writs awarded for recovery of the possession and costs, and in enforcing process of attachment in the case of breach of injunction; provided that nothing herein contained shall authorise the vice-warden to entertain any question touching the freehold or inheritance of any person except by such consent and as between and against such parties as aforesaid.

16. Whereas actions for debts not exceeding 50*l.* are now prosecuted summarily, and tried by five jurors only on the Common Law side of the said Court, and it is expedient that the like process and trial be extended to other actions, whether for debt or damages: Be it therefore enacted, that all or any actions for debts or damages not exceeding 50*l.*, whether founded on tort or contract, for causes within the jurisdiction and cognizance of the said Court, shall be prosecuted in a summary way by plaint, and tried by a jury of five jurors, as is now used in actions for small debts in the said Court, except in cases where the vice-warden shall permit or direct such action to be by writ of summons; and for the purpose of improving the procedure in such actions by plaint, it shall be lawful for the vice-warden to make and enforce rules and forms of procedure, practice, pleading, and taxation of costs, and to adopt all or any of the rules and forms now or hereafter legally in force and use in the County Courts, with such alterations as may be necessary to adapt them to the jurisdiction of the vice-warden's Court.

[To be continued.]

## COSTS OF PROCEEDINGS IN CROWN SUITS.

A BILL has been introduced by the Attorney-General for "The Payment of Costs in Proceedings instituted on behalf of the Crown in matters relating to the Revenue, and for the Amendment of the Procedure and Practice in Crown Suits in the Court of Exchequer." It recites that in divers proceedings instituted by or on behalf of the Crown against the Queen's subjects in respect of matters relating to the revenue no costs are recovered by the Crown, except in certain cases, and no costs are paid by the Crown to the subject: and that it is expedient to assimilate the law as to the recovery of costs in such proceedings by or on behalf of the Crown to that in force as to proceedings between subject and subject: it is therefore proposed to enact as follows:—

1. In all informations, actions, suits, and other legal proceedings instituted before any Court or tribunal whatever by or on behalf of the Crown against any subject of her Majesty in respect of any land, tenements, or hereditaments, or of any goods or chattels, belonging or accruing to the Crown, the proceeds whereof by any Act now in force as hereafter to be passed are to be carried to the Consolidated Fund of Great Britain and Ireland, or in re-



spect of any sum or sums of money due and owing to her Majesty by virtue of any vote of Parliament for the service of the Crown, or of any Act of Parliament relating to the public revenue, her Majesty's Attorney-General shall be entitled to recover costs for and on behalf of her Majesty, where judgment shall be given for the Crown, in the same manner, and under the same rules, regulations, and provisions, as are or may be in force touching the payment or receipt of costs in proceedings between subject and subject, and such costs shall be paid into the Consolidated Fund.

2. If in any such information, action, suit, or other proceeding, judgment shall be given against the Crown, the defendant shall be entitled to his costs, in like manner, and subject to the same rules and provisions, as though proceedings had been had between subject and subject; and it shall be lawful for the Commissioners of her Majesty's Treasury and they are hereby required to pay such costs out of any moneys which may be hereafter voted by Parliament for that purpose.

3. Reciting, that the procedure and practice in informations, suits, and other proceedings instituted by or on behalf of the Crown in her Majesty's Court of Exchequer is dilatory, and requires amendment, and it is desirable that the same should be assimilated as nearly as may be to the course of practice and procedure now in force in actions and suits between subject and subject: It is therefore proposed to enact, That it shall be lawful for the Barons of her Majesty's Court of Exchequer, or any three of them, to make all such general rules and orders for the regulation of the pleading and practice in such informations, suits, and other proceedings, and to frame such writs and forms of proceedings, as to them may seem expedient for the purpose aforesaid; and all such rules, orders, or regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately upon the making of the same, or if Parliament be not sitting, then within five days after the next meeting thereof; and no such rule, order, or regulation shall have effect until three months after the same shall have been so laid before both Houses of Parliament; and any rule, order, or regulation so made shall, from and after such time aforesaid, be binding and obligatory on the said Court, and on all Courts of Error into which any judgment of the said Court shall be carried by any writ of error, and be of the like force and effect, as if the provisions contained therein had been expressly enacted by Parliament: Provided always, that it shall be lawful for the Queen's most excellent Majesty, by any proclamation inserted in the *London Gazette*, or for either of the Houses of Parliament, by any resolution passed at any time within three months next after such rules, orders, and regulations shall have been laid before Parliament, to suspend the whole or any part of such rules, orders, or regulations, and in such case the

whole, or such part thereof as shall be so suspended, shall not be binding and obligatory on the said Courts, or on any other Court of Common Law or Court of Error.

## NOTICES OF NEW BOOKS.

*The Law relating to the Probate, Legacy, and Succession Duties; including all the Statutes, and the Decisions on those Subjects: with Forms and Practical Directions.* By LEONARD SHELFORD, Esq., of the Middle Temple, Barrister-at-Law. London: Butterworths, 1855. Pp. 408.

THIS work treats—1st. Of the Stamp Duties on Probates and Letters of Administration; 2nd. Of the Legacy Duty Acts; 3rd. Of the Construction of the Legacy Duty Acts; 4th. Of the Succession Duty. The Appendix contains the Succession Duty Act of 1853; the Rules for determining the amount of the Duty; Directions as to the Payment of the Duties, with Forms to be filled up.

Mr. Shelford's object has been to present a methodical arrangement of this branch of the Stamp Laws, including the statutory provisions and the decisions thereon. He observes that—

"The Succession Duty Act, 1853, having altered in some important particulars the Legacy Duty Acts, and applied some of its provisions to the former Act, it occurred to the author that a methodical arrangement of the several provisions of those Acts would form a useful manual of reference for the use of the practitioner. The Statute has not yet been in operation a sufficient length of time to be the subject of many decisions, and it is understood that there is only one petition of appeal presented to the Court of Exchequer against the assessment of the Commissioners of Inland Revenue, in the case of Succession Duty, whence it may be inferred that their decisions hitherto have been satisfactory to the parties concerned.

"The Stamp Laws still remain in such a complicated state as to render the application of them in the daily transactions of life a matter of great difficulty and uncertainty. A more equitable scale of Stamp Duties has been adopted in reference to some subjects, and some provisions in the Common Law Procedure Act, 1854, will obviate difficulties which formerly occurred as to the want of proper stamps on documents produced at trials, which come within the provisions of the latter Act.

"It appears to the author that the Commissioners appointed for the consolidation of the Statute Law would have conferred a substantial benefit on the public if their labours had been directed towards this subject.

"Since the introduction, in the year 1836, of the Bill to consolidate and amend the laws relating to Stamp Duties, this branch of the

law has become so much more complicated and multifarious as to render it inexpedient to include in one Bill the whole subject matter; but it certainly appears to the author that the Stamp Laws on matters affecting such subjects as are of daily occurrence in the practice of barristers, solicitors, and others, might with great advantage, be consolidated and arranged, without rendering it necessary to include Probate, Legacy, and Succession Duties."

We agree in opinion with the learned author, that the Stamp Acts should be consolidated, and, moreover, that they should be properly arranged according to the several fiscal departments to which they appertain:—Wills and Administrations; Legacy and Succession Duties; Deeds and other Legal Instruments; Bills, Notes, and Receipts, &c., with the Rules and Regulations applicable to each distinct Class of Duties.

On the subject of the Probate of Wills and Letters of Administration, and the Reforms proposed in regard to the Ecclesiastical Courts, Mr. Shelford remarks that—

"Although Doctors' Commons appears to be in a state of transition into the all-absorbing powers of the Court of Chancery, the author has devoted a few pages, showing the course to be pursued for obtaining probate of wills and letters of administration in cases of ordinary occurrence. Even if that measure should be sanctioned by the Legislature, which appears to be extremely doubtful, as it has been already postponed until after the Whitsuntide holidays, the small portion of this work devoted to that subject will not be without its use. A few pages, added by way of introduction or supplement, will be sufficient to explain the alterations which are proposed to be made in the mode of proving wills and taking out letters of administration.

"The author's opinion is, that it would be more advantageous to the public to convert the establishment at Doctors' Commons into a Testamentary Court, having jurisdiction over England and Wales, rather than to transfer the jurisdiction to the Court of Chancery, already sinking under the pressure of more business than it can satisfactorily dispose of. The great evils of the present system of proving wills and granting letters of administration arise from the number of peculiar jurisdictions and the doctrine of *bona notabilia*. The expenses of Commissions issued by the Prerogative Courts for the proof of wills and swearing parties taking out letters of administration is another abuse, which ought to be rectified. If the Legislature should establish such a Testamentary Court, fees on Commissions may be abolished, and 'the Commissioners to administer oaths in Chancery in England' may take the necessary proofs now required in the case of proving wills and granting letters of administration, such proofs to be trans-

mitted to the Testamentary Court at Doctors' Commons. The Prerogative Court already possesses many of the necessary officers and offices for transacting a large portion of this branch of business. And, if the establishment at Doctors' Commons is not already sufficiently large, there is ample room and space enough in that locality for enlarging or increasing the buildings required for the safe custody of the necessary documents. The danger arising from so many wills being deposited in one place of safe custody may be obviated by making printed copies of the wills proved, and the letters of administration granted, legal evidence, in which case there would be little danger to be apprehended from the destruction of the original documents.

"The author, however, concurs in the opinion expressed by the Chancery Commissioners, that, in cases of small properties, the transaction in London of the business of obtaining probates and granting letters of administration may reasonably be dispensed with, and in their recommendation that district offices, through which probates or administrations, in cases of small properties, may be taken out, should be established in different parts of the country as branches of the Court of Probate, each of such districts to comprise a county or counties or some known division of a county or counties. If it be objected that a certain amount of property is not the proper test for deciding a principle of legislation, it may be answered that all wills of testators not having any property in the public funds or other similar securities, as railways, out of the known division where they resided and died, may be allowed to be proved in such division.

"Another important objection to the proposed Testamentary Bill before the House is the heavy expense which will attend the measure in the shape of compensation to officers whose services might be usefully engaged in the proposed Testamentary Court, without the necessity of any compensation from the public revenue."

The work comprises some valuable practical directions regarding the payment of the Succession Duties, and the filling up of the Forms issued by the Commissioners of Inland Revenue. The following are the directions as to the payment of the duties:—

"The Commissioners of Inland Revenue, under the powers confided to them for the collection of the probate, legacy, and succession duties, possess the means (although it is not obligatory upon them to do so) of apprising executors, administrators and successors, of the duties for which they are liable to account, and of protecting them from incurring penalties through ignorance. The principal feature of the system, so far as relates to wills and letters of administration, and successions under wills, is, that the office is regularly supplied by the several Testamentary Courts with copies

of all wills proved, and certain particulars of all letters of administration granted in such Courts. By these means the Commissioners obtain *prima facie* evidence of the amount of duties to become due on the property of every deceased person whose will is proved, or in respect of whose estate letters of administration are granted. On the registration of the copies of wills and abstracts of letters of administration, circular letters are written to the executors or administrators, apprising them of the circumstances, and giving them a succinct statement of the different duties payable on legacies, and the manner in which they are to be accounted for. The Commissioners do not possess the same means of ascertaining succession duty under deeds, but it is to be observed that the copies of the registered wills will give them the necessary information for inquiring after succession duty.

"Although the Commissioners of Inland Revenue do not possess the same means by reference to an index of deeds of the existence of settlements, yet the change of the ownership of real estates is generally a matter of notoriety, and the revenue officers employed in the country districts, will, no doubt, be directed to give notice where the ownership of land has changed.

"The Acts of Parliament do not render it obligatory upon the Commissioners of Inland Revenue to write the letters before-mentioned, and therefore parties who are aware that they are liable to account for legacy or succession duties, if well advised, will offer payment, although they have not received any letter from the Commissioners.

"At the expiration of twelve months from the date of the circular letter, if the duties in the meantime have not been accounted for, another letter requiring payment of all unsettled duties is addressed to the executors or administrators, or other party liable to account. If the residuary personal estate is bequeathed to or devolves upon parties chargeable with duty, another letter is addressed to the executor or administrator, calling for a full account of the estate of the deceased, and of the manner in which it has been disposed of. If attention be not paid to this letter within a short time, and the duties remain unaccounted for, other and more urgent letters are written, until the payment of the duty shall be obtained, or it be shown to the satisfaction of the officer that none are payable. If the applications be attended by neither of the above results, the case is handed over to the Solicitor of the Inland Revenue, with directions to institute legal proceedings against the parties liable to account to render their accounts."

The modes of paying the duty, as well in London as in the country, are thus described :—

"If an executor or administrator reside in London or within its suburbs, or in any part of the county of Middlesex, he must either attend in person or by an agent at the Legacy

Duty Office, Somerset House, for the purpose of passing his accounts and paying the duty. In the case of a simple pecuniary legacy to an adult, the executor before payment of the legacy should take the printed form No. (1) and fill up the blanks in accordance with the facts of the case.

"Executors resident in Great Britain, beyond the limits above-mentioned, may pay the duties to a stamp distributor of stamps, or his deputy, in the country. The necessary documents, as the legacy discharge, &c., must be deposited with the distributor, who will receive the duty, and give an acknowledgment on a printed form for the duty paid. The documents have to be transmitted to the head office in London for examination previously to their being registered and stamped. The legacy papers deposited with the stamp distributors are transmitted monthly to the head office, and a period of a few weeks must elapse before they are returned to the distributors from whom the parties may learn when the papers ought to be returned. If any material explanation should be required by the office in London before the documents are stamped, the executor should make a written statement, to be attached to the papers to be sent to the office in London by the stamp distributor."

The Forms to be filled up under the Legacy and Succession Duty Acts, may be obtained at the Commissioners' office, Somerset House, or of the distributors of stamps in the country. They are as follows, with the directions applicable to each :—

"Form No. 1 is a Legacy Receipt or Discharge.

"Form No. 2 is a receipt for an Annuity.

"Form No. 3 is called the Residuary Account. This form of account is to be delivered (in duplicate) of personal estate, and of monies arising from real estate, devised to be sold, &c. for the purpose of having the legacy and residue duties charged and assessed pursuant to the Acts 36, Geo. 3, c. 52, and 45 Geo. 3, c. 28, and 55 Geo. 3, c. 184.

"1. Executors and administrators, before the retainer of any part of the property to their own use, are to deliver the particulars thereof at the Legacy Duty Office, in London, or to the distributor in whose district they reside, and pay the duty thereon within fourteen days after, under the penalty of treble the value of the duty.

"2. All rents, dividends, interest, and profits arising from the personal estate of the deceased or real estate directed to be sold, subsequent to the time of his or her death, and all accumulations thereof, down to the time of delivering the account and offering to pay the duty on the residue, must be considered as part of the estate, and be accounted for accordingly.

"3. Any account transmitted by post, or left under cover at the office, will either be returned to the parties or thrown aside unnoticed.

"Form No. 4 is the form to be filled up in respect of Succession Duty for property not chargeable by way of annuity.

"Personal property includes money charged on real property and money to arise from the sale of real property.

"The party making the return is to state the title, whether under settlement, by survivorship or in any other manner, and if under a deed or document, the date thereof and the names of the parties thereto.

"State whether trustee, &c. or successor.

"Form No. 5 is for Succession Duty for an annuity or life interest in Personal Property.

"The party making the return is required to state in the title, whether under settlement, by survivorship, or in any other manner, and if under a deed or document, the date thereof and the names of the parties thereto.

"The party making the return has to state in what character it is made, whether as successor or as trustee, executor, administrator, or guardian, &c.

"Form No. 6 is for the Succession Duty on Real Property, which includes all freehold, copyhold, customary, leasehold and other hereditaments, whether corporeal or incorporeal.

[This account to be delivered in duplicate.]

"The party making the return is to state the title, whether under settlement, will, intestacy, or by descent, and if under any deed or other document, the date thereof and the names of the parties thereto; and also whether trustees, &c., or successor."

## LAW OF ATTORNEYS AND SOLICITORS.

### DUTY TO DELIVER UP CLIENT'S PAPERS IN REASONABLE CONDITION.

It appeared that the defendant had acted for several years as the solicitor to a railway company, who, on their having retained another solicitor in his stead to transact their business, required the defendant to deliver up the papers and documents relating to their business and which he had in his possession. The papers, &c., were accordingly delivered up, but the company had incurred some expense in having them arranged and put into proper state and order, whereupon this action was brought, and on the trial before *Crowder, J.*, the question was left to the jury, who found for the plaintiffs, with 1s. damages, with leave to the defendant to move to set aside the verdict and to enter a verdict for him.

On the motion being made, *Pollock, L.C.B.*, said:—"There can be no doubt

that it is the duty of a solicitor to deliver up his client's papers in a reasonable state of order. He has no right to mix them all together, and then deliver them so mixed up to his client. The question, whether the defendant in this case did deliver the papers, when required, in a reasonable state and condition was for the jury. That question was left to them, and they found that he had not; but at the same time, they appear to have thought that no damages had been sustained, or that the objection to the mode in which the papers were delivered was a captious one, by finding a verdict for the plaintiffs, with nominal damages only."

*Parke, B.*, said:—"The learned Judge's view was correct. If the person to whom papers are entrusted is not bound to keep them in such order as is convenient for reference, at all events he is bound to deliver them up in a reasonable and fit condition for use, when called upon to do so by competent authority. That is the obligation alleged in the declaration, and it is an obligation cast upon the defendant by law. Whether the defendant violated that obligation is a question for the jury, and they have found that he has; but they awarded nominal damages only, on the ground, as it would seem, that there had been great delay in bringing this action."

*Martin, B.*, said:—"I think that the law imposes the duty upon an attorney, as it does upon every person who has the custody of another person's property, to deliver it up in a reasonable state. The steward of a manor, for instance, is bound, when called upon, to deliver up the papers of which he has the charge in a proper condition." The rule was accordingly refused. *North Western Railway Company v. Sharp*, 10 Exch. R. 451.

## LAW OF EVIDENCE.

### EXAMINATION OF WITNESSES.

ON the examination of witnesses before a special examiner, a defendant called a Mrs. Ahmughty, whom the plaintiff had previously examined in chief, in a previous suit of *Cochrane v. Cochrane*, but alleged to be connected with the present, and the plaintiff then cross-examined the witness at large.

The Vice-Chancellor *Kindersley* held, that assuming the two cases to be between the same parties and touching the same question, the plaintiff had the right he claimed to cross-

examine Mrs. Ahmughty when called by the defendant, although he had himself previously called her as his witness.

A question was also raised, whether, if a defendant called a witness and examined him in chief, a co-defendant might cross-examine him.

The *Vice-Chancellor* said, "as the question is a new one, arising out of the practice recently introduced, I thought it better not to decide the case according to my opinion alone; but to take the opinion of the other Judges of the Court, in order to obtain uniformity of practice. If I could have found what is the practice at law clearly laid down, I should have felt it expedient to follow that practice; but it is singular that for a case of this kind, so far as it appears by the authorities cited,<sup>1</sup> and so far as I have been able to search for authority, there does not seem to be any clear and explicit rule laid down. There is this also to be observed, that whereas at law, witnesses when examined and cross-examined, are so before a judge who can regulate the course of examination; that is not so before an examiner of this Court. The only cases at law which I can find are criminal cases; and one readily sees that some different rule might be applied in criminal cases, where, if a witness is called by one prisoner, his evidence may affect another prisoner. In criminal cases, it appears that if one prisoner calls a witness, and if the evidence of that witness can affect another prisoner, that other prisoner can cross-examine the witness; but I find no single case of a civil action where there is any express authority on this point. Now, there is no doubt that in this Court the theory is that, properly speaking, there is no issue as between co-defendants; so much so, that in theory one defendant was not supposed to know the contents of another defendant's answer. And under the old practice, no part of the evidence was known to any party until the whole was complete. Under the present practice, when witnesses are examined before the examiner, all parties are or at least may be questioned, and all parties know what the depositions of the witnesses are, as they are given. Now one may easily conceive, that a case might arise in which, intentionally and unfairly, where co-defendants conceive themselves to have *prima facie* a common case against the plaintiff, it might happen that one defendant might call a witness, and ask some indifferent question in order that the co-defendant might cross-examine him; and so possibly that defendant might get an advantage against the plaintiff which he ought not to have. On the other hand, it might be that one defendant is in the same interest with the plaintiff, and he might call a witness and affect by the evidence of that witness the case of another defendant; in that case there would be prejudice to that co-

defendant if he could not cross-examine the witness.

"On the whole the Judges are of opinion, that justice will be best worked out, if the examination is open as if all parties had separate interests. In the case now before me, it is to be observed, that you cannot decide the case of the plaintiff, without indirectly deciding in some measure as between co-defendants. Here the case is, what was the domicile of the testator? Now, supposing the plaintiff to insist on English domicile, defendant A. on Scotch, and defendant B. on French domicile—I do not say that that is exactly the contention, but it might be so—it is quite obvious that you cannot decide whether the domicile is or is not English without deciding a matter which may decide as between co-defendants. The opinion of the Judges is, then, that if a defendant examines a witness, either the plaintiff or a co-defendant may cross-examine him. If he examines him before the plaintiff has done so, and the plaintiff wishes to use that examination as against another defendant, he must have the option of doing so. And if a defendant cross-examines, it is not necessary that the plaintiff should go through the form of again cross-examining the witness; if he is satisfied with the cross-examination, he may use it. The opinion, then, of the whole of the Judges is, that a defendant may cross-examine a co-defendant's witness. When the evidence is taken, whether it be examination in chief or on cross-examination, the whole is common to all parties."—*Lord v. Colvin*, 3 Drewry, 222.

## HULL BOROUGH SESSIONS.

THE Midsummer General Quarter Sessions of the Peace for the Borough and County of the Town of Kingston-upon-Hull, were opened on Friday morning the 6th instant, before Samuel Warren, Esq., D.C.L., Q.C., Recorder.

The learned gentleman proceeded to charge the Grand Jury, as follows:—

Gentlemen of the Grand Jury.—Measures are pending in Parliament which, if passed into laws, will effect important changes in the administration of criminal justice in this place, and throughout England. As far as concerns myself, one of those measures, if carried in the form in which it was proposed to, and is now before, the Legislature, may sever the connection between myself and this borough; for I really do not see how any one, in my position, can, under existing circumstances, continue Recorder of Hull, if, living in London, he is henceforth, for instance, to travel to Hull eight times a year.—The first of the measures in question, then, to which I shall draw your attention, is a Bill entitled "An Act for the more frequently holding of Assizes and Sessions of the Peace," presented to the House of Lords by the Lord Chancellor, and which has nearly arrived at the third reading, after having undergone alterations in Committee,

<sup>1</sup> *Barnard v. Papineau*, 3 De G. & S. 498; *Regina v. Burdett*, 24 Law J., Mag. Cas., 63.

and being liable to others before it quits that House, with which I am not fully acquainted. Gentlemen, I venture, with the utmost respect, to express a doubt whether this Bill has received that full consideration which such an one demanded. The general scope of the measure is this. Her Majesty, by Order in Council, may order any two or more adjoining counties—without regard to their being at present on different circuits—to be united, for the purpose of trying, in one of them, at an assize or assizes additional to the present Spring and Summer ones, any one charged with an offence committed in any of such united counties. And in like manner a county of a city, situate as Hull is, within a county at large, may be, for the same purpose, united with the county at large. A commission for the trial of such offences may issue for any one of such adjoining counties, or for such county at large, alone; and all persons committed in any of the other counties, shall be removed to the gaol of that for which the commission is issued, and be there tried. If found guilty, the offender may be punished in either the county where the conviction took place, or where the offence was committed; but in the former case the treasurer of the county where the offence was committed must pay to the treasurer of the county in which the offender is confined, the expense of his imprisonment and maintenance; disputes on the subject being adjusted by the machinery specially appointed for the purpose. Thus much for the proposed changes in the assizes, which are of an extensive character as you may see, disturbing very ancient institutions of this country, and especially the ambulatory administration of criminal justice which has prevailed for ages; but I say nothing more at present concerning them, that I may come to the clause which so materially affects us here at Hull—that which relates to the sessions. It is proposed to enact, that the justices of the peace in counties, and the recorders of boroughs, shall hold *four* additional general sessions unless the Secretary of State, in case of the smallness of the number of prisoners, shall give a dispensation, to be recalled when he shall think fit. These additional sessions are to be fixed annually at the Epiphany Sessions, by the justices and recorders respectively, so that the sessions and assizes may be held at times as nearly equidistant as possible. The county justices may determine that a barrister-at-law, of not less than ten years' standing, shall be appointed to preside at all or any of the sessions, as they may think fit, at a salary which they may fix; but the appointment of such a salaried chairman is to be vested in the Crown; and he is to hold his appointment during his good behaviour or for life, for that is really what it means, as it is the presumption of law, that a person appointed to an honourable office, will behave himself properly so long as he lives. He is to be *ex officio* a justice of the peace, and to be able to appoint a deputy, in case of sickness or unavoidable absence. Whether

the county justices will avail themselves of this option, or whether they will prefer the double labour and inconvenience of themselves holding the sessions, remain to be seen. But consider the greatly increased—the doubled expense thus suddenly thrown on counties and boroughs; and the very serious additional tax imposed on the time of prosecutors, jurymen, and witnesses; and the hardship imposed on the Bar hitherto attending sessions. And I cannot help asking, in common justice and reason, whether the position of recorders is to be lost sight of? I, for instance, shall have, if I retain the office, to travel henceforth every six weeks to Hull, thus not only almost consuming the small salary annexed to the office, in the expense of living here, and coming, and returning, but seriously, if not fatally, interfering with practice at the Bar, both in London and at the assizes. I consider the office of recorder, especially of such an important place as Hull, to be a most responsible one, which ought to be filled by a gentleman whose rank and standing at the Bar afford some guarantee to the public for his fitness; but if this Bill pass in its present form, recorders must be resident on the spot, and possibly those gentlemen in whom the Profession and the Public would have confidence, will not, and cannot accept the office. The Bill makes no provision whatever for increasing the salaries of recorders, whose duties and expenses it thus suddenly doubles; but I am sure that as far as that goes, the Lord Chancellor is far too just a man to allow the Bill to pass with such an omission.

Thus much for the Assizes and Sessions Bill; and I think that its framers have not bestowed due attention on the effect of another which I hold in my hand, and which also appears on the eve of receiving the assent of the Legislature, entitled "An Act for Diminishing Expense and Delays in the Administration of Criminal Justice, in certain cases." Now, gentlemen, a moment's consideration will show that the designed object, and the probable if not certain effect of this will be not only to render superfluous, or at all events premature, the other Bill—not only to afford no occasion for double sessions, but to cause those already held to shrink, as it were, into a span! Because this second Bill invests justices and stipendiary magistrates with the power, in the great majority of session cases, of dealing summarily with them, in pleas of either guilty, or not guilty; so that I, for one, so far from looking for doubled sessions, looked forward to seeing my calendar reduced to a dozen prisoners, or thereabouts, the sessions contracted into a day, and the Bar dwindled into two or three gentlemen, who hardly find it worth their while to come and afford the Court their assistance, and themselves acquire a knowledge of the practice of an honourable profession. And it seems to me, that if this second Bill be not in itself a failure, it will render the other such. To proceed with the Bill, is like doubling your

team, while halving or quartering your load ! A word or two, however, on this second Bill, which has undergone important and beneficial modifications since I last addressed you ; to which my highly valued friend, your late distinguished recorder, Mr. Baines, contributed, in a Select Committee to which the Bill was referred. As amended by them, the Bill now stands essentially thus. In simple larceny of property to the amount of *five* shillings, or receiving it, knowing it to have been stolen,—or in the case of an attempt to commit larceny from the person, or simple larceny, justices of the peace may dispose of it summarily ; and if a confession, or a proof, if defence be offered, and a conviction ensue, they may commit to prison, with or without hard labour, for a period not exceeding three months. They may dismiss the charge, if not proved, and such dismissal bars all future proceedings. All this, however, is on the assumption that the prisoner consents to such summary proceedings : for he is to be expressly asked whether he does so, or prefers his case being sent to the sessions or assizes, in which latter case the law will take its course as formerly. If there be a previous conviction against the prisoner, rendering him liable to transportation or penal servitude,—or if the justices think the charge to be otherwise fitter for adjudication at the assizes or sessions, they will simply commit for trial as at present. Again : in case of simple larceny of property above the value of five shillings,—or of stealing from the person, or of larceny as a clerk or servant, or embezzlement, or obtaining or attempting to obtain property by false pretences—a prisoner, being duly cautioned that it is optional to do so, may plead guilty ; on which he may be at once sentenced by the justices, provided the imprisonment with or without hard labour, be not longer than six months. But the petty sessions at which all this is done, is to be an open public Court, of which full previous notice is to be conspicuously given. These powers may be executed by any stipendiary magistrate, as well as the justices.

Gentlemen, I shall not repeat at length what I said at the last sessions, and have often since stated to members of both Houses of Parliament, on the subject of these measures, and which views I know to have met with their cordial concurrence. But I enter my solemn protest, as one ardently attached to the liberty of the subject, against the principle on which the measure proceeds, and which, however plausibly recommended by factitious and delusive safeguards derived from a prisoner's *preference* of summary correction, is a direct invasion of our glorious and hallowed institution, trial by jury. I quoted to you in my last charge, a very striking passage from Blackstone : and I have since discovered another, still more pertinent and forcible, and which I do earnestly commend to your attention, and that of our hasty legislators. He said that "summary conviction was

then"—even in his time, "so far extended, as, if a check were not timely given, to threaten the disuse of our admirable and truly English trial by jury, unless only in capital cases." And after enumerating the evil consequences flowing from this tendency, he says, that from them "we may collect the prudent foresight of our law-givers ; who suffered neither the property, nor the punishment of the subject, to be determined by the opinion of any one or two men ; and we may also observe, the necessity of not deviating any further from our own ancient constitution, by ordaining new penalties to be inflicted upon summary conviction !" Gentlemen, resist the thin edge of the wedge ; five shillings will soon swell into five, fifty, or five hundred pounds ; and on the one hand, the prisoner loses the precious right he has of being tried by his equals ; the public lose the benefit of the salutary terror of a solemn public exposure in Court before Judge and Jury, inspired into those meditating guilt ; while your own valuable functions of grand jurymen are altogether abrogated. But if these arguments must not prevail, and this Bill is to pass into a law, is it not premature, indeed, to pass the other Bill into law, without waiting to see the operation of this which may render it nugatory ? Gentlemen, there appears to me one change which the legislature might most beneficially introduce—simply by restoring the jurisdiction taken from Quarter Sessions in the year 1842, by Statute 5 & 6 Vict. c. 38,—in every case of an offence punishable by transportation for life, and in a series of other special cases ; for instance, burglary, bigamy, perjury, forgery, arson, libel, conspiracies, &c. I never saw the propriety of this arbitrary change : but now all reason for it is removed by the subsequent passing, in 1848, of the Statute 11 & 12 Vict. c. 78, constituting the new Criminal Appeal Court : by which any miscarriage in point of law, at either assizes or sessions, may be promptly rectified, and substantial justice done between the public and the prisoner. What serious offences can we, and do we, try in this Court, punishable with fifteen years' transportation ! If an error, in fact or in law, be committed at the trial, the Secretary of State, or the Appeal Court can promptly set it right ; and consider what a vast saving of expense and time it would be, to dispose of such cases on the spot, instead of dragging jurymen and witnesses to the assizes. This, gentlemen, I think, would be a solid improvement in the law, and in unison with the modern feeling in favour of the local administration of justice. As to the evil of keeping untried prisoners long in custody, no one feels it more strongly than I do ; but I would remedy it as far as practicable by liberality in granting bail, which is in accordance with the explicit enactment of the famous Bill of Rights ; and I would also, at all events, wait to see the effect of the most important measure proposed to obviate this very evil, before hurrying into that other measure which seems to me so objectionable.

Gentlemen, a third Bill most materially affecting us, is also at this moment before a Select Committee of the House of Commons—that of a public prosecutor. To that, also, I, as well as the vast majority of the Legal Profession, am very strongly opposed; and for reasons which I have twice explained from this place. But I have grounds for believing that the measure is not likely to obtain the sanction of the Legislature. Unless I am misinformed, very strong evidence has been given against the measure, before the Select Committee before which it is lying.

Another Bill concerning us is before Parliament—a short but useful one, simply for causing the witnesses who go before you, to be sworn *before you*, instead of here in Court, which it only disturbs, while it impairs the impressiveness and solemnity of the oath administered amidst such hurry and confusion.

I have been thus full and explicit on the subject of these proposed changes in the administration of criminal justice, not only because they are so deeply interesting and important to ourselves here, but because I entertain a strong impression that none of them far advanced though some of them be, will receive the assent of the Legislature this year, in the present advanced period of the session, in the state of public business, and the temper of the House of Commons. There will be time, in such an event, for giving that consideration to those Bills which they demand, and which I do not see that they have hitherto received. Gentlemen, ever since I sat here, I have felt it an interesting duty to lay before the grand jury, and through them this large and enlightened section of the community, the changes proposed and effected, in the administration of criminal justice. No people can be deemed worthy of liberty, that does not feel a lively interest in such matters; and I believe, nay I know, that you do. But what have we hitherto been concerned with? The mode of punishing crime at once efficiently—and shall I say it—*economically*, a word which may suggest serious and stinging reflection on a too conspicuous tendency of the age. While we are thus seeking to *punish*, as quickly and cheaply as possible, our guilty but unfortunate brethren, cannot we cast our eyes on, and seek to occupy higher ground—the *prevention* of crime? Indeed we can, but this, I need not remind you, cannot be done by the spasmodic efforts of mere eloquent and sentimental philanthropy, and pecuniary liberality. What has been *done*, gentlemen—actually *done*, in the great cause of Reformation, in this borough, since we last met? Are we all standing languidly, as it were, with wooden axes, around the dread Upas tree of crime? Believe me, keen steel, sinewy arms, and a thoroughly-determined will—an impulse and energy springing from a sincere and enlightened heart and conscience—are needed to lay the axe to the root of that accursed tree, with any hope of felling it. Gentlemen, I

might say much, because I feel deeply on this subject, but all I will say is, that since I arrived in Hull I find something is really doing; that though the local papers, which I read regularly every week with more interest and attention than I do even the London daily papers, have been silent on this subject during the last few weeks, I nevertheless am assured, on indisputable authority, that the movement is progressing satisfactorily in this borough. Gentlemen, that is of itself a rich consolation to all in this town who are resolved to render God good service, and take the best possible mode of removing the increasing weight of crime with which society is burdened. Gentlemen, let none of us who have put our hands to the plough dare to look back, but having perceived the danger and the difficulty, let us confront the one, let us make a vigorous effort to overcome the other. Let us never lay down our arms but with life. For, as our Saviour says, “the poor ye have always with you,” so shall we always have the *guilty*. Let us be stimulated to the work by the reflection—how criminal we all are in the sight of our unsleeping and Omniscient Creator! Gentlemen, it makes my heart bleed to hear and to read complaisant declamations on the subject of crime when committed by the *lower orders*! Do not certain recent disclosures force us to think of our own and the higher orders? Cannot we pluck out the beam that is in our own eye before we pronounce too severely as to the mote that is in our brother’s eye? Let us make an allowance for poor transgressors, young or old, who stand at that bar, exposed to temptations which they cannot resist. Cannot we, whom Providence has blessed with a lot above theirs, take care to exhibit those virtues which ought to adorn that more elevated sphere? Let us seek—not with Pharisaic pride to thank God that we are not alike sinful with them; but with a gratitude corresponding with our mercies in being reclaimed ourselves, and stimulated by that kindness which has been bestowed upon us, may we earnestly strive that our poor brother may receive the same assistance. I have read the report of your exemplary and pious gaol chaplain, with feelings of deep emotion. You will, I hope, all read it attentively, for it discloses in vivid hideousness, ignorance, and intemperance, and the barbarous neglect and corruption of youthful innocence, in full and fell action.

The learned Recorder then, with a few passing remarks on the calendar, dismissed the grand jurors to their duties. The calendar was heavier than, until a week ago, he had anticipated—containing 46 or 47 cases, and the names of upwards of 50 persons for trial. One was a case of escape from prison and violent assault upon one of the upper officers of the gaol, but none of them required from him any particular remark. In hearing the evidence of some young children, who were stated to have been robbed, the good sense of the grand



jurors would lead them to take it in such a way as would preserve the composure and self-possession of the witnesses.—*Hull Express.*

## PARLIAMENTARY RETURNS.

### COURT OF CHANCERY.

RETURN to an order of the House of Commons, dated 8th June, 1855, "of the Number of Causes in the High Court of Chancery, whether commenced by Bill or Claim, in which Evidence was taken, between the 1st day of November, 1853, and the 1st day of November, 1854:"

"Of the Number of such Causes in which the Evidence was taken Orally:"

"Of the Number of such Causes in which the Evidence was taken by Affidavit:"

"And, of the Number of such Causes in which any Witness or Party was Examined therein, under the Act 15 & 16 Vict. c. 86, s. 39, before the Court where such Causes were heard; with the Names of the Judges before whom such Examinations took place (in continuation of Parliamentary Paper, No. 234, of Session 1854)."

Return of the Number of Causes in the High Court of Chancery, whether commenced by Bill or Claim, in which Evidence was taken Orally, between the 1st day of November, 1853, and the 1st day of November, 1854.

The number of such Causes in which the Evidence was taken orally, between the dates above-mentioned, is 195

FREDERICK BEDWELL,

JAMES A. MURRAY,

SETH CHARLES WARD,

*Clerks of Records and Writs.*

There are no materials in this office from which the other particulars of the Return required by the said Order can be given.

Return of the Registrars of the High Court of Chancery of the Number of Causes in which any Witness or party was examined therein, under the Act 15 & 16 Vict. c. 86, s. 39, before the Court where such Causes were heard; with the Names of the Judges before whom such examinations took place.

Lord Chancellor . . . —

Master of the Rolls . . . 1

Lords Justices . . . 5

Vice-Chancellor Kindersley . . . 1

Vice-Chancellor Stuart . . . —

Vice-Chancellor Wood . . . 3

R. O. WALKER, Senior Registrar.

*Registrar's Office, July 2, 1855.*

### COUNTY COURTS.

1. Total amount of Judges' Fees received from the 13th March, 1847, to 1st Jan., 1854 . . . £ 567,028 0 0
2. Total amount of such fees received by the Judges prior

to the 1st October, 1848, £ s. d.  
from which date they have been paid by Salary . . . 150,684 0 0

3. Total amount of the Salaries paid to the Judges, by way of Salary, from the 1st October, 1848, to the 1st Jan., 1854 . . . 333,000 0 0
4. Total amount of the Allowances for Travelling paid to the Judges, from 1st October, 1848, to the 1st Jan., 1854 . . . 64,433 0 0
5. Difference between the total amount of Judges' Fees received in the Courts since the 1st October, 1848, and the amount of Salaries and Travelling Expenses paid thereout . . . 18,911 0 0
6. Total amount of Clerks' Fees received in all the Courts from the 13th March, 1847, to the 1st January, 1854 (the division of which is shown in the three following Columns) . . . 557,772 0 0
7. Total amount of Salaries paid thereout to those Clerks mentioned in the Order of Council of the 30th July, 1849, and who are alone paid by Salary, and to their Office Clerks, from 1st October, 1849, to the 1st January, 1854 . . . 76,725 0 0
8. Total amount of Fees received by those Clerks of County Courts who are not paid by Salary . . . 464,242 0 0
9. Surplus of the Fees received in those Courts, the Clerks of which are paid by Salary, under the Order of Council of the 30th July, 1849, over and above the amount of their Salaries and those of their Clerks . . . 16,805 0 0
10. Total amount of High Bailiffs' Fees received in all the Courts from 13th March, 1847, to 1st January, 1854 . . . 394,054 0 0

Paid over to the High Bailiffs, these officers being remunerated by fees alone.

11. Total amount received by the treasurer of each Court, on account of the general fund, from March, 1847, to 1st January, 1854 . . . 321,589 0 0
12. Total payments made thereout for the disbursements of each Court during the same period . . . 275,282 0 0
13. Difference between receipts and expenditure . . . 46,307 0 0
14. Total amount allowed to treasurers to defray their

travelling expenses, from 13th March, 1847, to 1st January, 1854 . . . .	£	s.	d.
15. Total amount allowed to the clerks of the treasurers for their travelling expenses during the same period . .	23,737	0	0
16. Total amount expended by the treasurers during the same period for stationery, postage, &c. . . . .	4,344	0	0
17. Total amount of the annual allowance made to each treasurer for rent of office and clerk hire during the same period . . . . .	2,511	0	0
18. The funds out of which the previously stated allowances have been paid. Out of surplus fees.			
19. The names of all districts in which Court Houses have been built, and the expense of each such Court House.			
Leeds . . . . .	£4,048		
Dewsbury . . . . .	1,548		
Downham Market . . . . .	1,241		
Royston . . . . .	1,469		
Edmonton . . . . .	1,507		
Waltham Abbey . . . . .	1,209		
Whitechapel . . . . .	1,490		
Shoreditch . . . . .	3,519		
Bow . . . . .	1,939		
Clerkenwell . . . . .	1,658		
Bloomsbury . . . . .	1,574		
Brompton . . . . .	1,039		
Marylebone . . . . .	7,301		
Westminster . . . . .	3,154		
Lambeth . . . . .	3,000		
Greenwich . . . . .	2,280		
Sheerness . . . . .	1,846		
Southampton . . . . .	2,646		
	£42,668		

## STATUTE LAW REFORM.

### PROPOSED PLAN OF REVISING THE EXISTING AND FUTURE STATUTES.

IN the form of a letter to the Lord Lord Chancellor, Mr. Kimplay<sup>1</sup> has proposed a plan for dealing with the Statute Law, public and general, which we submit to our readers:—

“I propose, in the first place, to ascertain the whole Statute Law in force intended to be retained, and to divide this into heads, as is done in the valuable edition of Chitty’s Statutes

by Welsby and Beavan, taking care to make the division as perfect as possible, and, where necessary, as will sometimes occur, referring the same clause to more heads than one. Having done this, I propose to arrange the clauses of each head in chronological order, and to number them consecutively 1, 2, 3, &c.; but, for convenience of reference, to retain also their present designations by chapter and section.

“For completeness I propose by a general enactment to repeal all Statutes and parts of Statutes not dealt with in this way.

“I propose that no alterations should be made in the wording of the sections, except perhaps merely for the purpose of supplying references.

“With respect to future Statutes, each enactment should be referred at once to its proper head, and the new sections should be numbered consecutively, in continuation of the preceding sections of the head to which they belong.

“By way of illustration, I have appended the Statute Law relating to ‘Arbitration,’ treated in the way I have suggested. On the left-hand side are the proposed new numbers of the different sections, and on the right their present designations by chapter and section. Future enactments might be engrafted upon those already in force in the way indicated by what follows s. 17, of 17 & 18 Vict. c. 125.

“I have added an index for the purpose merely of showing how the *special* enactments of any head might be dealt with as distinguished from the *general* enactments of the same head.

“The advantages of the plan I have ventured to bring before your lordship appear to me sufficiently obvious; but I will take the liberty of mentioning four:—

“1. By retaining the different enactments in their integrity, with no further alterations than such as I have suggested, no disturbance would take place in the law as settled by the decided cases.

“2. By collecting the clauses under their proper heads, and numbering those of each head consecutively 1, 2, 3, &c., and continuing such consecutive system of numbering in the future enactments falling under the same head, the whole Statute Law relating to any particular subject would always be presented in a compact form, with some security for its completeness. At the same time, by retaining, in addition to the new system of numbering, the present designations of the clauses by chapter and section, the same facility of reference as exists at present would be afforded.

“3. By collecting the Statute Law intended to be retained, and repealing all the rest by a general enactment, a service of a far more practical and useful kind would be rendered both to the public and the Profession, than by merely determining the enactments which have been repealed or are obsolete.

“4. The plan suggested would not in any way interfere with the great work of codifica-

<sup>1</sup> In two cases the money has been borrowed on mortgage of the general fund, under sect. 51 of 9 & 10 Vict. c. 95, the total amount borrowed being 8,600*l*.

<sup>2</sup> Proposed Plan for dealing with the Statute Law. By James Kimplay, M.A., Barrister-at-Law. London: Benning. Pp. 16.

tion, but, on the contrary, would be a step towards it; and, in the meantime, the advantages it would possess in itself would, I believe, well repay the cost and labour of carrying it out."

This is the whole pamphlet, and it has the merit of conciseness. The author has selected the Statutes on the Law of Arbitration, as an illustration of his plan, namely, the 9 & 10 Wm. 3, c. 15; 3 & 4 Wm. 4, c. 42; and 17 & 18 Vict. c. 125. This example, however, is of very limited extent, comprising only three Acts on a subject of no very complicated or difficult nature.

## JURIDICAL SOCIETY.

A MEETING of this Society, the last before the Long Vacation, was held on Monday evening, at its Rooms, Trafalgar Square. *Harris Prendergast*, Esq., B.C.L., in taking the Chair, apologised for the absence of the Solicitor-General, who was prevented from being present by his parliamentary duties.

*Mr. J. Napier Higgins*, one of the Honorary Secretaries, announced that letters had been received from several distinguished persons to whom the first publication of the Society had been presented, and among others from the Lord Justice Knight Bruce, and from Professor Mittermaier, of Heidelberg, who highly eulogised some of the papers which it contained.

*Mr. J. Fraser Macqueen* read the paper of the evening, the subject of which was, "Divorce, especially in reference to the Rights of Wives."

An interesting discussion ensued upon the subject of Divorce, by *Mr. Norton* (late Chief Justice of Newfoundland), *Dr. Waddilove*,

*Mr. W. Hialop Clarke*, *Mr. Reilly*, *Mr. Cory*, *Mr. Sidney Smith*, *Mr. W. M. Best*, and *Mr. Jebb*.

## NOTES OF THE WEEK.

### BUSINESS OF THE COURT OF CHANCERY.

*VICE-CHANCELLOR KINDERSLEY* stated, that all Petitions would be postponed until the last Petition-day, so as to enable the Court to dispose of the remaining cases on further directions.

### DISTURBANCE OF THE PUBLIC PEACE.—CONDUCT OF THE POLICE.

The Queen has been pleased to direct letters patent to be passed under the Great Seal, constituting and appointing the Right Honourable *James Archibald Stuart Wortley*, Recorder of London, *Robert Baynes Armstrong*, Esq., one of her Majesty's Counsel, Recorder of Manchester, and *Gilbert Henderson*, Esq., Recorder of Liverpool, to be her Majesty's Commissioners for inquiring into an alleged Disturbance of the Public Peace in Hyde Park and the Streets adjoining thereto, on Sunday, the 1st July, 1855, and into the conduct of the Metropolitan Police in connexion therewith.

### NUMBER OF EJECTMENT CASES IN IRELAND.

From a return to the House of Lords, ordered to be printed on the 5th instant, it appears that—

The number of writs and summonses, and plaints in ejectments, issued out of the three Superior Courts of Law in Ireland, in the Hilary and Easter Terms of 1850, was:—

In the Queen's Bench	240
Common Pleas	51
Exchequer	327
Total	618

And in the like Terms of 1855:—

In the Queen's Bench	52
Common Pleas	129
Exchequer	150
Total	331

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

*Broughton v. White.* July 14, 1855.

### COSTS OF SOLICITOR TRUSTEE.—DISBURSEMENTS ONLY ALLOWED.

Held, *dismissing with costs an appeal from Vice-Chancellor Stuart, that where an executrix employs her co-trustee under a will to transact with his partner certain business necessary under the trusts, such as the sale of estates under a trust for sale, the solicitors are only entitled to the money actually paid and disbursed, and not to the usual professional remuneration.*

This was an appeal from the decision of Vice-Chancellor *Stuart* (reported 2 Smale & G. 422). It appeared that the defendant had been employed by the testator, *Mr. Thomas Broughton*, in reference to a sale of his real and copyhold estates, in order to pay off certain debts, and that although certain portions were sold, a considerable part remained unsold. The testator then by his will devised to his wife and the defendant the whole of his real estates in trust to receive the rents and profits thereof until sold, and on further trust to sell the same by public auction or private contract, and to execute all necessary conveyances; and in case any of the testator's real

estates should be under contract of sale at his death he empowered the trustees to complete such contracts and to execute all necessary conveyances. Upon the testator's death, several contracts were incomplete of which conveyances were made. The defendant, by the direction of Mrs. Broughton, who was appointed sole executrix of the will, obtained probate, and she instructed him by letter to take whatever steps he should find to be necessary either in recovering the arrears of rent due to the testator's estate, or in giving notices to quit to tenants, and in providing by further sales of the real estates for the discharge of the whole of the testator's debts and incumbrances, as early as practicable, according to the trusts reposed in them jointly under his will. Certain terms were afterwards, in October, 1844, agreed to by which the further sales were to be forthwith proceeded with as might be deemed advisable, and the defendant was to retain 500*l.* out of the money remaining in hand after certain specified payments, on account of his bill for business to the previous August: such bill to remain open for taxation as between attorney and client. The defendant acted as Mrs. Broughton's solicitor up to her death, and there was a considerable balance due in respect of such business. The Master by his report having disallowed the amount of such costs, except such parts as consisted of money actually paid and disbursed by the defendant and his co-partner, these exceptions were taken. The Vice-Chancellor overruled the exceptions, whereupon this appeal was presented.

*Malins* and *J. Hinde Palmer* in support; *Bacon* and *C. Chapman Barber*, contra.

The Lord Chancellor said, that there could be no difference of opinion in respect to the rule of this Court, that no trustee had a right to make a profit of the duties of his office. The only question therefore was, whether there were any circumstances in the present case which excepted it out of that rule. There did not appear to be any, and although the defendant had undoubtedly acted *bona fide*, the Court looking at the cases cited,<sup>1</sup> was unable to see how the Vice-Chancellor could have arrived at any other conclusion. The appeal would therefore be dismissed with costs.

#### Lords Justices.

*In re Feargus O'Connor, ex parte the Official Manager of the National Land Company.*  
July 13, 1855.

LAND COMPANY.—CONVEYANCE BY OFFICIAL MANAGER IN NAME OF LUNATIC TRUSTEE.

*The official manager of a land company was*

*directed to execute the conveyance of a part of their property in the name of the trustee thereof, who had the legal estate and was since a lunatic, to certain claimants in the Master's office pursuant to a compromise.*

THIS was a petition on behalf of the official manager of the above company for the appointment of a person to execute a conveyance of certain of the company's property in the place of this lunatic, who was trustee for the company and had the legal estate. The conveyance was required under a compromise effected in the Master's office with certain claimants against the company.

*Rozburgh* in support.

The Lords Justices directed the official manager to execute the conveyance in Mr. O'Connor's name,—the costs to come out of the estate.

*Twyman v. Hudson.* July 14, 1855.

BANKRUPT LAW CONSOLIDATION ACT.—ORDER ON MEMBER OF PARLIAMENT, UNDER S. 73.—EX PARTE.—NOTICE.

*Semble, that the application for an order under the 12 & 13 Vict. c. 106, s. 73, on a member of Parliament, against whom a decree has been made in a suit for the specific performance of an agreement, should not be ex parte but on notice.*

THIS was an application *ex parte*, on appeal from Vice-Chancellor *Stuart*, for an order under the 12 & 13 Vict. c. 106, s. 73,<sup>1</sup> on the defendant in this suit, for the specific performance of an agreement, and in which a decree had been made, but which could not be enforced by attachment, in consequence of the defendant being a member of Parliament.

*Malins* and *Rozburgh* in support.

The Lords Justices said, that it was doubtful whether the order could be made *ex parte*, but gave leave to give short notice of motion.

<sup>1</sup> Which enacts, that "if any decree or order shall be pronounced in any cause depending in any Court of Equity, or any order shall be made in any matter of bankruptcy or lunacy, against any such trader, ordering such trader to pay any sum of money, and such trader shall disobey such decree or order, the same having been duly served upon him, the person entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may apply to the Court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last-mentioned order seven days before the day therein appointed for payment of such money, shall neglect to pay the same, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after the service of such order."

<sup>1</sup> *Christophers v. White*, 10 Beav. 523; *Collias v. Carey*, 2 Beav. 128; *Fraser v. Palmer*, 4 Y. & C. 515; *New v. Jones*, 9 Byth. Convey. 338; *Todd v. Wilson*, 9 Beav. 486; *Cradock v. Piper*, 1 M'N. & G. 664; *Moore v. Frowd*, 3 Myl. & Cr. 48; *Lincoln v. Windsor*, 9 Hare, 158.

## Master of the Rolls.

In re ——. July 13, 1855.

**SOLICITOR AND CLIENT.—PERSONAL SERVICE OF ORDER FOR DELIVERING UP PAPERS.—DISPENSING WITH.**

*The usual order had been obtained for the taxation of a solicitor's bill of costs, and for delivery up of papers on payment of what should be found due. A taxation took place, and the bill was reduced by more than one-sixth, but it was found impossible to serve the order for delivery up of the papers by reason of the solicitor keeping his outer door shut: An order was made for leave to dispense with personal service, — the order to be affixed to or pushed under the outer door.*

THIS was a motion for leave to dispense with personal service of an order on a solicitor, for the delivery up of papers. It appeared that the solicitor had transacted certain business, for which he sent in his bill of costs, and that the usual order had been thereupon obtained for taxation thereof, and for the delivery up of the papers to the client upon payment of what should be found due on such taxation. The costs had been taxed, and reduced by more than one-sixth, and it was thereupon found impossible to serve the solicitor with the order for delivery up of the papers, by reason of his keeping shut the outer door of his office.

Karslake in support.

The Master of the Rolls said, that under the circumstances personal service would be dispensed with, and that the order might be affixed to or pushed under the outer door.

## Vice-Chancellor Kindersley.

Haylock v. Rowbotham. July 12, 1855.

**EVIDENCE.—PROOF OF WILL BY AFFIDAVIT.**

*Held, that a will may be proved by affidavit under the 17 & 18 Vict. c. 125, s. 26, in the same manner as a deed, without calling the attesting witnesses.*

A QUESTION was raised on this petition in the above suit, whether a will could be proved by affidavit under the 17 & 18 Vict. c. 125, s. 26, which enacts, that "it shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto."

Toller in support of the petition.

The Vice-Chancellor (after communicating with the Master of the Rolls) directed the affidavit to be filed.

## Vice-Chancellor Stuart.

Stanger v. Nelson. July 11, 1855.

**WILL.—CONSTRUCTION.—"COUSINS."**

*First cousins once removed, and second cousins, held entitled to participate in*

*a residuary bequest to the testator's "cousins."*

THE testator, by his will, gave the residue of his real and personal estate to trustees in trust to sell and invest the same, and to stand possessed of the trust funds in trust for and to pay the same to all his *cousins* who should be living at his decease in equal shares, their executors, administrators, and assigns, for their own use and benefit. The question now arose, whether first cousins once removed, and second cousins, were entitled.

Bacon, Malins, Burdon, Batten, and C. Wood for the several parties.

The Vice-Chancellor said, that they were all entitled to participate in the bequest.

## Vice-Chancellor Wood.

Lord Abingdon v. Thornhill. July 16, 1855.

**INJUNCTION SUIT.—STAYING PROCEEDINGS.—FILING PRINTED BILL.**

*Where proceedings had been stayed in a suit for an injunction to restrain interference with ancient lights, upon the defendant's undertaking: Held, that there need not be a printed bill filed instead of the written one under the 3rd Order of August 7, 1852, but such written bill was suffered to remain on the file until further order.*

IT appeared on this motion for an injunction to restrain the defendant from interfering with ancient lights, that the defendant had given an undertaking whereupon the proceedings were stayed. The question now arose, whether a printed bill must be put on the file, notwithstanding such stay of the proceedings.

By the 3rd Order of August 7, 1852, it is directed, that "the clerk of records and writs shall, at the expiration of 14 days from the filing of any written bill or written copy of a bill, take off the files of the Court, without further order, the bill or copy so filed, unless a printed copy thereof shall in the meantime have been filed, and the plaintiff in the suit, or his solicitor, who shall personally have undertaken to file such printed copy, shall pay to the defendant all the costs incurred by him in the suit, such costs to be taxed by the Taxing Master, without further order, upon production to him of the certificate of the Clerk of Records and Writs, that a printed copy of the bill has not been filed pursuant to such undertaking, and to be recoverable in like manner as costs ordered to be paid by a party in a suit to another party in a suit are now recoverable."

Freeling now applied for the direction of the Court upon the refusal of the Clerk of Records and Writs to allow the written bill to remain on the file.

The Vice-Chancellor said, that under the circumstances, the filing of a printed bill might be dispensed with until further order, and the written one remain on the file.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“Still attorneyed at your service.”—*Whitakers*

SATURDAY, JULY 28, 1855.

### GENERAL PRINCIPLES FOR THE REGULATION OF SOLICITORS' COSTS.

It may be acceptable to a considerable class of our readers to discuss the general rules or principles by which the remuneration of solicitors should be regulated, as set forth in the revised summary presented by the Council of the Incorporated Law Society to the Judges and taxing officers appointed by the Lord Chancellor to inquire into and revise the fees of solicitors.

It will be recollected that before the recent changes in the Law and Practice took place, it was repeatedly acknowledged by the most strenuous Law Reformers, that the allowances to solicitors on the taxation of their costs were on the whole by no means too large in amount. On the contrary, it was admitted that they were inadequately paid for many services they rendered, and for others received no remuneration whatever. In return for some of these services, however, they received compensation in the shape of the copy-money for papers of great length, which work being done by writing-clerks or law-stationers at a moderate rate, yielded the solicitor a considerable profit.

The Judges, Masters, and other officers of the Court formerly derived a large part of their incomes from the number and length of these documents and proceedings. For the loss which they sustained by the reforms which have been effected, the Judges, Masters, and officers have been amply compensated. But no compensation has been made to the attorneys and solicitors, and such compensation can only be effected by a revision of their fees and just allowances

being made for services duly and faithfully rendered to their clients.

It cannot be denied that, comparing the reasonable emoluments of solicitors prior to the recent changes, with those now receivable, there is a diminution of at least one-third, or from 30 to 40 per cent. It appears, therefore, to be just and right, even according to the admissions of the reformers themselves, that this loss should be made up by an increase of the remaining fees, and the practical question now to be considered is, *how* is this object to be accomplished?

With this view we turn to the suggestions of the Incorporated Law Society.

1st. They propose “that consideration should be given to any *special agreement* for remuneration which may have been entered into by competent parties.”

The class of cases to which this alteration would apply, are those wherein the solicitor incurs great risk of losing his costs altogether,—the means of payment being dependent on the success of the suit;—or where success may be highly probable, yet a large outlay is required and payment long deferred. In such cases the ordinary fees are insufficient. It is not of course proposed that the special arrangement for higher fees, or a specific amount of remuneration in gross, should be exempt from investigation, but that the amount should be liable to be reduced if any wilful misrepresentation were made by the solicitor regarding the risk incurred. It is proposed only that such agreements between competent parties should be taken into consideration and enforced where *bond fide*. This principle appears indeed to be recognised in the recent case of *Mr. Moss of Derby*, in the matter of *Bainbridge*, where the

costs amounted to several thousand pounds. If such an agreement were impugned, it would of course be incumbent on the client to prove that the solicitor had misrepresented the circumstances of the case.

2nd. It is suggested "that the officer taxing or ascertaining the solicitors' remuneration shall have regard to the actual *skill and labour employed and responsibility incurred, and not merely to the length or multiplicity of the written forms of proceeding, and make such allowances to the solicitor as his services fairly deserve, although no specific fee applicable to such services may be stated in the scale.*"

We presume that in ordinary cases where the deed, document, or paper is in the usual form,—and looking at its length,—the present charge of 1s. per folio will afford a reasonable compensation to the practitioner, the *length* will still in general regulate the allowance; and the suggestion does not exclude the length, but that the charge should not be *merely* governed by it. The proposed improvement evidently applies to cases where something more than ordinary skill is employed, or more than ordinary responsibility incurred, in the transaction of the business. For instance, in stating the facts of a case or brief for counsel, a bill or answer, affidavits, or other papers, where it appears that the solicitor has not only made a judicious selection from a vast mass of materials, but arranged them skilfully and concisely:—so that as well the document then in hand, as all future proceedings arising out of it, will be shortened and rendered more easy of comprehension, a liberal fee should be allowed for the solicitor's extraordinary skill and labour. It is indeed manifest that by such allowances the time of the Court and its officers will be essentially saved and the expense of the suitor diminished in all the future stages of the business.

3rd. It is next recommended "that in carrying out the second direction, necessary *attendances and correspondence* in the progress of a cause or matter,—including in country cases, letters between the country client and town agent,—be allowed."

According to the existing rule, great injustice is done to the practitioner in disallowing many of his letters and attendances, and especially in rejecting all charges for correspondence in agency business. A suit relating to property away from the metropolis, or in which the parties and their solicitors are resident in the country, cannot be satisfactorily conducted without

much correspondence. In London, the necessary communication between the parties and their solicitors may be conducted by personal attendances, and for which allowance is made (though often to an inadequate extent). In country cases, such communications must generally be effected by letters, and there is no reason or justice in requiring that such correspondence should be conducted gratuitously. The time of the solicitor in the country, and the agent in town, is largely occupied in writing letters, making inquiries, or stating the information he has collected.

We understand that an objection has been raised to the claim for correspondence, on the ground that it is liable to great abuse, and in the hands of unscrupulous persons it would be difficult to control the charges within fair and reasonable bounds; moreover, that persons unskilled in their Profession would multiply needless inquiries and suggest unfounded and idle doubts. Of course, it will not be contended that the great bulk of practitioners who are honest and intelligent, should go without their just remuneration, because a few unprincipled or ignorant persons may attempt to impose on their clients or their opponents. It will be the business of the taxing officer to prevent any abuse of the regulation, and though it may sometimes be difficult to detect the overcharge, the officer will be well assisted by the opposite solicitor, whose duty it will be to expose any attempt at imposition.

4th. It is further proposed, "that a *fee on ending* be allowed for the term in which a cause or matter shall be brought to a conclusion,—the amount to be in the discretion of the proper officer, who shall have regard to the importance of the case, the amount of property involved, and the skill and diligence exerted by the solicitor."

The object of this proposed "fee on ending" is, of course, to stimulate the solicitor to extraordinary exertions for the purpose of bringing the suit to an early conclusion. Seeing that Chancery proceedings have been notoriously slow, and that even with the recent improvements it must be difficult in many suits to end them speedily, this premium to exertion has been recommended. The proper officer to assess the fee would not, however, be always the Taxing Master, but the Chief Clerk under whose eye the vigilance and activity of the solicitor had been displayed, or the Judge before whom the case had been brought to a hearing at an early period, or under cir-

cumstances of difficulty, which superior talent and energy had overcome.

5th. We come next to the suggestion "that *Interest* be allowed to the solicitor on all disbursements from the end of the year in which the same shall have been made, and on all bills from the time they shall have been delivered;—or if taxed as against a fund, then from the end of each year in which the business shall have been transacted."

It is well known that in Chancery suits which continue (sometimes unavoidably) for many years, and in the early stages of which considerable outlay has been made for counsel's fees, fees of office, and other disbursements, the profit of the solicitor does not exceed the interest of the money advanced. It is equally notorious that where such advances are required, many solicitors decline to undertake the conduct of a suit, and thus it has often happened that suitors have been unable to prosecute their claims, and too often have submitted to a denial of justice, because they could not find a solicitor who was willing, not only to give his services, but to lend the money necessary to carry on the suit, it may be for 10 or 15 years, on the expectation only that he will ultimately receive the ordinary costs. It appears, therefore, to be necessary for the due administration of justice, either that interest should be allowed on the costs incurred, or validity given to special agreements between attorneys and their clients, in regard to the ultimate remuneration to be made for the advances which may be made and the risk incurred.

6th. It is then proposed, "that the Chief Clerks of the Judges be authorised, so far as practicable, to fix the sums to be paid for costs in any matter transacted in the Judges' Chambers."

This appears to be a proper and convenient suggestion, inasmuch as the Chief Clerks have all been practising solicitors, and before them the business is done: they are, therefore, peculiarly competent to assess the just amount of remuneration, and by this means much of the time of the Taxing Master will be saved in ascertaining the proper amount to be allowed. The Chief Clerk can easily determine, from his personal knowledge of the course of the proceedings, what would be the equitable amount of remuneration; whilst the Taxing Master would have to peruse all the papers in the case, and even then could scarcely award the just sum for the various services properly rendered by the Solicitor.

7th. An important proposition is then made to the effect—"that in *administration suits*, where the property does not exceed 500*l.*, the costs be taxed on the existing scale, and for proceedings involving a larger sum the improved scale be adopted, and if thought proper, that the scale of charges should be increased according to the value of the estate and effects."

This suggestion involves the *ad valorem* principle of charge, and seems to be easily applicable to cases for the administration of assets. We believe that the suitors would readily concur in such an arrangement. The practice thus recommended, prevails in Scotland, where per centage allowances are made according to the amount of the property.

8th. It is also urged that "a Commission (or per centage) be allowed on the receipt and payment of money into and out of Court."

At the Bank of England, on the sale or purchase of stock, a per centage is allowed the broker who identifies the parties and attests the transfer, and there seems no reason why a solicitor who performs a like duty at the Accountant-General's Office should not be similarly remunerated. Whether the sum be a few pounds or 20,000*l.* paid into Court or received out, the solicitor is allowed only a small stated fee. He incurs the risk of losing the money when required to pay it into the bank, and he is responsible for identifying the proper party who by the order of the Court is entitled to receive money out of Court.

We may also mention two other general topics which have been submitted to the Commissioners, namely,

9th. "That on the taxation of costs between *party and party*, all costs be allowed, which on a taxation of costs between Solicitor and client, to be paid out of a *fund in Court*, would be held to have been properly incurred."

It is admitted that where costs are ordered to be paid by the unsuccessful party in a suit, he should be charged with such items only as are reasonable and necessary for bringing the case properly before the Court, and that if the successful party has incurred expenses by *superabundant* caution, he should himself bear the burden in the shape of *extra* costs; but a liberal interpretation ought to be put on the rule, and the successful party subjected only to such expense as appeared to be clearly uncalled for, although the Solicitor, at the desire of his client, might have retained



more counsel than the case required, or have collected evidence and prepared for contingencies that were deemed unnecessary.

10th. Another suggestion of great practical importance is, "that all *Appeals* from the Taxing-Masters be made to the Judge at Chambers."

In numerous cases, where costs are disallowed, which the party considers himself entitled to—if the amount be not large, he submits to the loss, because of the expense of an application to the Court. Consequently, errors of practice in the taxation of costs occur, which might readily be prevented by a cheap and speedy application to the Judge in Chambers.

Such are the general rules submitted to the Commissioners of Inquiry on Solicitors' Fees. The Council of the Law Society have also suggested various improvements in regard to *specific* fees to be allowed by the Taxing-Masters in the details of *Chancery Practice*—to which we shall advert on a future occasion.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### JURISDICTION OF THE STANNARY COURT AMENDMENT.

18 VICT. c. 32.

[Concluded from p. 219, ante.]

17. Where any cause touching the usage or customs of mining or of miners, or the principles and incidents of cost book partnership or of cost book mines, or the privileges and franchises of tinnars or miners, or the effect and operation of setts, or licenses to mine or contracts for the sale or transfer of shares in mines, or the custom of tin bounds or the nature and incidents thereof, shall be pending before one of the Judges of the County Courts within the stannaries, the said Judge shall, at the request of either party, have power to remit the said cause for trial or hearing before the Court of the vice-warden, who shall thereupon have all the same powers and jurisdiction with respect to the cause as if it had been commenced by plaint in the Court of the vice-warden, subject to the like appeal as in other causes so commenced.

18. Demurrers for matter of form only shall not be permitted in the Court of the vice-warden, and on the Equity side of the said Court no demurrers or pleas shall be permitted except demurrers for that the suit or subject thereof is not within the cognizance or jurisdiction of the said Court; and if the objection of want of jurisdiction shall not be raised by demurrer or plea within ten days after appearance in a suit on the Equity side, or within ten days

after notice of declaration or service of a copy of plaint on the Common Law side, no question as to the jurisdiction of the Court shall thereafter be raised, except in cases where the want of jurisdiction will disable the Court from doing full and substantial justice between the parties to the suit; and the mode of filing or serving demurrers or pleas to the jurisdiction shall be regulated by general rules and orders made as hereinafter provided, and so much of section 13 of the Act passed in the Session of Parliament holden in the 6 & 7 Wm. 4, c. 106, as relates to pleas and demurrers to the jurisdiction, and so much of the Act passed in the 16 Car. 1st, c. 15, as relates to the form and manner of objecting to the jurisdiction of the Stannary Courts, or is at variance with this Act, shall be and is hereby repealed, except as to suits commenced before the passing of this Act.

19. The registrar of the Court of the vice-warden shall have power at all times before hearing or trial, either on the Common Law or Equity side of the said Court, to make orders for amending the proceedings or pleadings upon terms or unconditionally, to hear and determine applications for further time, objections for defect of form, or on the ground of uncertainty, obscurity, prolixity, or multifariousness, and to make rules and orders in all such other interlocutory matters as shall be submitted or referred to him by consent of parties, or which he may be directed or empowered to hear and determine or deal with by any general rules or orders made under the authority of this Act; and the said several matters shall be heard and determined *ore tenus* in a summary way, subject however to appeal by motion to the vice-warden, either *ore tenus* or on a written statement agreed upon by the parties or drawn up by the registrar and submitted to the vice-warden.

20. The vice-warden shall have power, with the consent of the parties to any suit, their counsel, attorneys, or solicitors at law or in equity, to order the same, with or without other matters in dispute, to be referred to arbitration, or to act as such arbitrator himself, at the request of the said parties, in such manner and on such terms and conditions as he shall think fit, with all the usual powers of arbitrators, under references by order of the Superior Courts; and such reference shall not be revocable by either party except by consent of the Court; and the vice-warden shall have power to set aside the award for cause shown, or to refer the case back again to the arbitrator, and the final award made in pursuance of such reference shall, on the motion of either party, be entered as the decree or order of the Court or judgment shall be entered in pursuance of such award, as the case may be, and the decree, order, or judgment so entered shall thereupon be enforced as if the same had been made or entered in the ordinary course of procedure at law or in equity, as the case may be.

21. It shall be lawful for the vice-warden, at the request of one or some of the parties to a

suit, and subject to such terms as to costs or otherwise as he may think fit and reasonable, to adjourn or hold his Court to or at any place within the stannaries for the purpose of hearing witnesses or taking evidence; and in such cases it shall not be necessary for the registrar or secretary of the vice-warden or prothonotary of the Court to be in attendance at the sittings of the vice-warden at such place.

22. In all cases of mines in the stannaries worked by partnerships or companies of adventurers professing to adopt or to be constituted on the cost book system or principle, it shall be lawful for the vice-warden, upon application of any adventurer or shareholder in the mine or creditor of the adventurers, founded on sufficient grounds verified by affidavit, although no suit be pending touching the said mine or adventurers, to compel production by rule or order of a list or lists of all adventurers or shareholders for the time being by the pursuer or other principal agent or manager, clerk, or secretary of the mine, and whether such person be then within the jurisdiction of the Court or elsewhere, for inspection of the applicant; and if such list shall not be produced, showing truly the name, address, and number of shares of each and every adventurer or shareholder, and the time when each became an adventurer or shareholder, so far as the same are known or can be ascertained, then it shall be lawful for the vice-warden at his discretion, after fourteen days previous notice of his intention served on the person so ordered to produce, and also affixed to the account house of the mine, or left at the principal office or house of business of the adventurers within the stannaries or elsewhere, to declare that the partnership or company is not carried on or constituted on the cost book system or principle; and the said partnership or company shall thereupon no longer be deemed or taken to be for any purpose a partnership, association, or company within the exemption of mining partnerships contained in the Act passed in the present reign, entitled "An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies," or within the conditional exemption contained in the Joint-Stock Companies (Winding-up Amendment) Act, 1849; and in all cases of like mines and partnerships, it shall be lawful for the vice-warden, upon application of any adventurer or shareholder founded on sufficient grounds and affidavit, and although no suit be then pending, to make a rule or order for production of the cost books of the mine, list of adventurers, and such other books and documents relating to the mine and management thereof as the vice-warden shall think proper for inspection of such applicant; and to enforce such rule or order by attachment within the stannaries, or by causing the same to be made a rule or order of one of the Superior Courts at Westminster under the Statute in such case made and provided.

23. Whereas the power of the vice-warden to make general rules or orders of Court is insufficient; and it is doubtful whether it extends

to the adoption of improvements in the procedure of the Superior Courts recently made by Parliament, or of rules and orders made from time to time by the Superior Courts by the authority of Parliament: Be it therefore enacted, that it shall be lawful for the vice-warden to make from time to time new rules and orders touching the procedure, practice, pleadings, regulation of Court fees, and taxation of costs, both on the Common Law and Equity side of the said Court, and all other business of the said Court, and to prescribe forms for carrying into effect such new rules and orders; and also existing rules and orders not varied or repealed, and also to adopt all or any of the provisions contained in the Act passed in the Session of Parliament holden in the 15 & 16 Vict. c. 86, and in the Common Law Procedure Act, 1859, and in the Common Law Procedure Act, 1854; and all or any of the rules and orders from time to time made and promulgated by the Superior Courts by and under the authority of the said Acts or otherwise, with such modifications as may be necessary to adapt them to the jurisdiction of the vice-warden's Court; provided that no such rules, orders, forms, or provisions shall be made, prescribed, or adopted without the consent and approval of one of the Judges of the Superior Courts of Common Law at Westminster in the case of rules, forms, and provisions applicable to the Common Law side of the said Court, or of the Lord Chancellor or one of the Judges of the High Court of Chancery in the case of orders, forms, and provisions applicable to the equity side of the said Court; provided also, that nothing herein contained shall be construed to abridge or restrain any existing power of the vice-warden to make rules or orders in cases not requiring the consent or approval of any Judge of the Superior Courts.

24. When the vice-warden shall be prevented by illness or accident from attending and sitting on the day appointed for such sitting, it shall not be necessary to send any statement to the lord warden of the cause of his non-attendance or of the adjournment of the Court, unless the vice-warden shall be, or it shall appear to him probable that he will be, thereby prevented from sitting within the period required by law; and if for the reason aforesaid, it shall be necessary to appoint a deputy, it shall be lawful for the vice-warden to appoint such deputy, qualified as now required by law, for the then next sittings only, provided the cause alleged in such statement be allowed by the lord warden to be sufficient and the person so named as deputy be approved by him; and whenever it may be desirable to alter the time fixed for holding the Court, it shall be lawful for the vice-warden to accelerate or postpone the holding thereof, provided that such alteration be duly notified and published in the usual way; and the holding be not postponed beyond the third calendar month next after the calendar month in which the last preceding sittings were held, and no irregularity in the time of holding any Court or sitting shall vitiate

or avoid the proceedings at such Court or sitting.

26. And because doubts may arise as to the allowance of certain disbursements and payment of arrears of salaries on the auditing of the registrar's accounts, be it enacted, That upon such audit there shall be allowed annually, in respect of the expenses of advertising and holding Courts in Cornwall, summoning jurors enforcing payment of assessments, lighting, warming, cleaning, watching, and keeping the Court and offices there, providing furniture, books, stationery, and printing, and such additional accommodation or occasional assistance in the office as the vice-warden shall consider reasonable or necessary, a sum not exceeding 120*l.*; provided that if hereafter the expenses of the sittings and Court shall become larger by reason of increased business, more frequent sittings, or other causes, it shall be competent for the Council of the Prince of Wales, or special Commissioners for managing the affairs of the duchy for the time being, to authorise a larger allowance, not exceeding in the whole two-third parts of the fees of Court that shall come into the hands of the registrar during each year: And whereas it has happened, and may again happen, that the moneys arising from fees and assessments, and available for the payment of the official salaries charged on them, have been or may be insufficient to pay the current salaries when the same become due: Therefore, when the registrar shall account to the vice-warden for such moneys, there shall be allowed to him thereout not only the portion of salaries due in respect of the half year then last past, but also all or any arrears of salaries remaining unpaid on preceding accounts.

26. The provisions contained in the Act passed in the Session of Parliament holden in the 6 & 7 Wm. 4, c. 106, and in the Act passed in the Session of Parliament holden in the 2 & 3 Vict. c. 58, touching appeals to the lord warden, shall be repealed, and thenceforth from all decrees and orders of the vice-warden on the equity side of his Court, and from all judgments of the vice-warden on the common law side thereof, there shall lie an appeal to the lord warden, who shall have power to affirm, vary, or reverse the decree, order, or judgment wholly or in part, or to dismiss the appeal, or to direct a re-hearing or a new trial in the Court below, and to make such order or orders touching the costs in the cause as to him shall seem fit, and the decree, order, or judgment of the lord warden on such appeal shall be remitted to the vice-warden, to be by him carried into effect and enforced, if need be, according to the course and practice of the Court; and upon hearing such appeal it shall not be competent for the parties to produce fresh evidence in the cause, or to call upon the lord warden to hear any witnesses in the cause, unless he shall in his discretion think fit to do so; but the decree, order, or judgment of the lord warden may proceed on the state of facts appearing on the notes of the trial below certified

by the vice-warden or agreed upon by the parties; and the vice-warden shall certify such notes accordingly, and transmit to the lord warden a record of the proceedings in his Court, and all documents and papers in the cause in the custody of the Court; and the parties before the lord warden shall produce all the documents and papers produced on the trial below: On the hearing and decision of the appeal the lord warden shall be assisted by two or more assessors, who shall be members of the Judicial Committee of the Privy Council or Judges of the High Court of Chancery or Courts of Common Law at Westminster; and the decree, order, or judgment of the lord warden in the Court of Appeal so constituted shall be subject to a final appeal to the Judicial Committee of the Privy Council, who shall have power to hear and determine the same: And it shall be lawful for the lord warden to remit a cause pending before him on appeal at once for the determination of the said Judicial Committee, without pronouncing any previous judgment thereon: Provided that no appeal shall be allowed in any case where the debt or damage sought to be recovered shall not exceed 20*l.* and where no question of jurisdiction or of the custom of mining or miners shall have arisen in the Court below, nor shall any appeal operate to stay proceeding or be allowed, unless the party appellant shall notify in writing to the registrar, within 30 days after notice of the decree, order, or judgment appealed against, his intention to prosecute an appeal, and shall then give or offer to give security by bond to the registrar to prosecute the same within a time prefixed by the Court, and to abide by and perform the final order and award of the Court of Appeal, which bond shall not require to be stamped; and it shall be lawful for the lord warden, with the approval of two or more members of the Judicial Committee of the Privy Council or Judges of the High Court of Chancery or of the Superior Courts of Common Law, from time to time, to make any general rules and orders for regulating the practice, fees, and costs on appeal pending before him, not inconsistent with the provisions of this Act.

27. The penalties incurred by the head manager of any mine by reason of his omission to make such returns of metals and minerals, or the value thereof, or such payments in respect thereof as he is now required by law to make, shall be assessed and imposed by the vice-warden; and such penalties and all fines and penalties lawfully imposed and levied by authority of the vice-warden for any default or non-attendance of jurors, misdemeanor of bailiffs or other officers, contempt of Court, or other cause whatsoever, shall be paid to the registrar of the Court, and form part of the fund for payment of expenses and salaries, and such fines and penalties shall be levied within the stannaries by *feri facies* issued by order of the vice-warden, on complaint of the registrar, and summons, and hearing in a summary way; and if the offender be not found within

the stannaries, shall be levied on like summons and hearing, or default of appearance, in the manner hereinbefore provided for enforcing execution of judgments on the Common Law side of the Court.

28. And whereas by the 10th section of an Act passed in the Parliament holden in the 2 & 3 Vict. c. 58, it was enacted, that certain frauds committed by workmen in mines in the county of Cornwall should be deemed felonies, and should be punished as in cases of simple larceny: And whereas it is desirable that that enactment should be extended to the county of Devon: Be it therefore enacted, That for the prosecution and punishment of frauds in mines by idle and dishonest workmen removing or concealing ore for the purpose of obtaining more wages than are of right due to them, and thereby defrauding the adventurers in or proprietors of such mines, or in honest and industrious workmen therein, if any person or persons employed in or about any mine within the county of Devon shall take, remove, or conceal the ore of any metal, or any lapis calaminaris, manganese, mundick, or other mineral found or being in such mine, with intent to defraud the proprietor or proprietors of or adventurer or adventurers in such mine, or any one or more of them respectively, or any workmen or miner employed therein, then and in every such case respectively such person or persons so offending shall be deemed and taken to be guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny.

29. The vice-warden of the stannaries for the time being whose name shall or may be inserted in any commission of the peace for the county of Cornwall shall be qualified to act in the execution of the office of justice of the peace for the said county, although he may not have such qualification by estate or interest in lands, tenements, or hereditaments as is now enjoined by law in the case of other like justices; provided that he be not disqualified to act for any other cause or upon any other occasion than in respect of the want of such estate or interest.

30. The following parts and provisions of the Act passed in the Session of Parliament holden in the 6 & 7 Wm. 4, c. 106, shall be and the same are hereby repealed; that is to say, sections 5, 11, and 14, and so much of section 7 as relates to appeals, and the words "Nisi Prius" shall be considered as struck and omitted out of section 8: The following parts and provisions of the Act passed in the Session of Parliament holden in the 2 & 3 Vict. c. 58, shall also be and the same are hereby repealed; that is to say, sections 3, 4, and 9, and the proviso in section 2; but no Acts done or rules or orders made by authority of the provisions so repealed shall be thereby affected or made void.

31. Whereas it will be convenient that the office of the Duchy of Cornwall should be put on the same footing as certain public offices in

the transaction of law business: Be it enacted, That whenever any person shall be appointed by his Royal Highness the Prince of Wales, or other the personage for the time being entitled to the possession of the Duchy of Cornwall, to act as attorney or solicitor in the affairs of the said duchy, it shall be lawful for such person to act and practise as such attorney or solicitor in such affairs in all and every Court, jurisdiction, and place in any and every part of the United Kingdom, any Statute, order, rule, usage, or custom relating to attorneys or solicitors, or the admission, inrolment, or practice of attorneys or solicitors, to the contrary notwithstanding.

32. And whereas it has been represented that the adventurers, miners, and others interested in mines in the county of Devon would be benefited by the extension of the Stannary Court Jurisdiction into that county, and are willing to be contributory to the expenses of such extension, in the manner hereinafter provided: Be it therefore enacted as follows:—The jurisdiction of the Court of the vice-warden shall thenceforth be extended and exercised over the county of Devon, and over the mines and miners therein, and the process of the said Court, both at Common Law and in Equity, shall run in and be executory throughout the counties of Devon and Cornwall, and the forms and customs of procedure as now lawfully used and exercised in the stannaries of Cornwall (subject, nevertheless, to such amendments or provisions as are contained in or may be authorised by this Act, and to all other lawful rules and orders of the Court,) shall henceforth be adopted, used, and enforced in and throughout the stannaries and county of Devon, and the stannaries of the said two counties shall be and become, for the purposes of stannary jurisdiction, one entire district, and the present and all future vice-wardens of the stannaries shall be vice-wardens of the stannaries of and for both counties, and shall have therein all the like powers, privileges, authority, and jurisdiction over and in respect of mines and miners, and causes touching the same, in Devon as in Cornwall, and all miners and others interested in mines in Devon shall have the privilege to sue and be sued at Law and in Equity in the Court of the vice-warden, and be amenable to the said Court and vice-warden, as well by reason of the person as of the cause, in like cases and for like causes in and for which the miners and others interested in mines in Cornwall now have such privilege or are amenable to the said Court and vice-warden: Provided always, that the Common Law jurisdiction of the vice-warden in respect of causes of action arising in Devon, shall not extend to or be exercised in the county of Devon or to or over miners therein, except in causes and in respect of matters relating to mines or the products thereof or works connected therewith, or to the working or management thereof, or the supply of materials, money, or necessities, or performance of work and labour to, for, or in respect of such mines

or works, or relating to the customs of mining or minors, or to shares or interests in any mine or adventure in mines.

33. And whereas it will be convenient that provision should be made for periodical sittings of the Court in Devonshire as well as in Cornwall: Be it enacted, that if and when it shall appear to the Council of his Royal Highness the Prince of Wales, or the Special Commissioners for managing the affairs of the duchy for the time being, that the revenue annually arising from the assessment hereinafter authorised on mines in Devonshire will amount to the sum of 320*l.* at the least, over and above the expense of collection, the said Council or Commissioners shall have power to direct that sittings be held by the vice-warden in Devonshire, and thereupon the vice-warden shall so sit, either by adjournment from Truro or otherwise, at least four times in each year, as he has heretofore been accustomed to do in Cornwall, and he shall hold his sittings either at Plymouth, Devonport, or Stonehouse, in the said county, as to him shall seem fit, subject to the power of adjournment in certain cases, as hereinbefore provided, and for that purpose shall have authority to use and occupy the public halls of the said boroughs, or some other convenient building provided for such sittings, at such convenient times and in such way as may not interfere with other necessary public business usually transacted therein, and in that event the said Council or Commissioners shall direct in what manner, and on what conditions, terms, and tenure, moneys arising from such assessment, or any part thereof, shall be appropriated, either among the present officers of the Court and their successors, or to the deputies who (with the assent and approval of the vice-warden) may be employed by such officers to execute their duties or any part of their duties, when the Court shall be sitting in Devonshire, or to new or additional officers and clerks, or towards the general expenses of the Court, so as best to secure the due performance of the additional duties and increased business occasioned by the extension of the jurisdiction, and to indemnify the present officers of the Court for any expenses to which they may be put by attendance elsewhere than at Truro, and payment shall be made according to such appropriation, and it shall be competent for the Council or Commissioners, at the recommendation of the vice-warden, to vary such appropriation, having due regard to the exigencies of business in the said Court, and the amount of funds applicable to the expenses thereof.

34. There shall be a collector of the assessments in the county of Devon, to be appointed by the vice-warden, with like duties and liabilities as in Cornwall, who shall receive for such collection, out of the moneys so collected, an annual sum not exceeding 30*l.*, and shall hold his office at will, and it shall be lawful for the vice-warden to appoint the same person to be collector in both counties, and to appoint bailiffs for service and execution of process

throughout the whole district of both stannaries.

35. All jury trials, whether in actions, suits, or plaints, on the Common Law side of the Court, arising in the county of Devon, or in issues from the equity side, shall be by persons qualified to serve as jurors before the justices of assize and nisi prius in the said county; and for making out lists of such jurors, and summoning them, the vice-warden shall have and execute the like powers as in Cornwall; and the persons so qualified to serve shall be liable to challenge, and amenable to the process of the said Court, and enjoy the same exemptions in respect of their attendance and service as in the stannaries of Cornwall: Provided nevertheless, that until the vice-warden shall receive the directions of the said Council or Commissioners, as above provided, to hold sittings in the county of Devon, it shall not be obligatory on him to hold any sittings there, nor shall it be obligatory on persons qualified to serve as jurors in the vice-warden's Court in Devonshire to give their attendance as such at any Court held by him in that county or elsewhere, nor shall any cause arising in Devonshire, and pending before any County Court Judge there, be remitted for trial or hearing before the vice-warden, as hereinbefore provided; and in the meantime the said Council or Commissioners shall direct in what manner and in what proportions the revenue arising from fees and assessments in respect of causes and mines in the county of Devon shall be applied towards Court or office expenses, or payment of the present or additional official salaries.

36. And for the purpose of providing for the expenses attendant upon the extension of the jurisdiction of the Court into Devon, there shall be an assessment of a farthing in the pound on the value of all metals and minerals in that county, as in Cornwall, and all the enactments contained in this and any other Act of Parliament for obtaining and enforcing returns, and levying and collecting the said assessment, in Cornwall, shall be taken to apply to the like assessment in Devon, and the collector thereof shall account for all moneys received by him as in Cornwall, and such assessment shall begin at the passing of this Act, and be collected for the first time at the end of three calendar months next after the passing of this Act; provided, that whenever it shall appear to the vice-warden, on auditing the registrar's accounts, that there is a balance in hand sufficient to meet all authorised payments for the next half year, the like notice thereof and suspension of assessment shall take place as in the assessment in Cornwall; and the registrar of the Court shall keep a separate account of all fees and moneys coming into his hands in respect of causes and matters arising in the county of Devon, and in respect of the assessment of metals and minerals in that county, and shall render accounts to the vice-warden as in Cornwall, and shall be allowed in his half-yearly account, as well the additional salaries

and sums lawfully chargeable thereon, as hereinbefore provided, as the reasonable and needful expenses of advertising and holding Courts and summoning jurors in the county of Devon (if any be held), and of lighting, warming, cleaning, watching, and keeping the Court, and an office there (if any), and other like petty expenses, as allowed in the county of Cornwall, and the amounts so audited shall be filed, and be open for inspection, as is now used in the said Court.

37. Persons committed to prison by the vice-warden in respect of causes or contempts in the county of Devon shall be committed and taken either to the county gaol at Exeter or the borough gaol of Plymouth or Devonport, as shall appear to the vice-warden most expedient in each case, and shall be received, dealt with, maintained, supported, and provided for as if they had been committed to those prisons by like process out of the Superior Courts of Law or Equity at Westminster, or by any Court of civil jurisdiction held in or for the borough of Plymouth or Devonport.

38. Whenever it shall hereafter appear that a sufficient fund shall be provided in the stannaries of Devon for the establishment of a permanent separate Court and a separate office and officers in and for a vice-warden's Court in the county of Devon, it shall be lawful for her Majesty, by Order in Council, issued at the instance of the said Council of his Royal Highness, or the Special Commissioners as aforesaid, to direct that such Court and office shall be erected and established on the model of the vice-warden's Court as now constituted in Cornwall, and to declare that all provisions of the present Act, and of the several Acts for the establishment of the said Court in Cornwall, so far as they shall be applicable to such new Court in the county of Devon, shall be deemed and taken to be in force in the last-mentioned county, and to assign salaries to the several officers of the said Court, not exceeding the salaries appointed before or at the passing of this Act for the like officers in the county of Cornwall, and to declare what proportion of the salary now payable to the vice-warden of the stannaries shall thenceforth be contributed out of the revenue arising in the county of Devon if the same vice-warden shall be appointed for both Courts, and to make such other regulations as shall be necessary or expedient for effectually establishing and providing for such separate Court and office; and thereupon, on the promulgation of the said order in Council, the said separate Court and office shall be and become permanently established in the county of Devon, as fully and effectually as if the same had been established and confirmed by Act of Parliament; and all provisions made by this Act, or by the Council of his Royal Highness, or the said special Commissioners, under the authority of this Act, for the extension of the jurisdiction of the present Court into the county of Devon, shall cease, save only that the process of the Court in each county in causes arising in that

county shall be executory and executed in and throughout both counties.

#### COUNTY PALATINE OF LANCASTER TRIALS.

18 & 19 VICT. c. 45.

Her Majesty may issue commissions to chief justice, &c., of Common Pleas in the County Palatine of Lancaster, &c., authorising them to take all the assizes, juries, &c., in the said county in like manner as in other counties.

The following are the Title and Section of the Act:—

An Act for further assimilating the Practice in the County Palatine of Lancaster to that of other Counties with respect to the Trial of Issues from the Superior Courts at Westminster. [16th July, 1855.]

Whereas by the Common Law Procedure Act, 1852, section 103, it was enacted, that Records of the Superior Courts at Common Law should be brought to trial and entered and disposed of in the Counties Palatine in the same manner as in other counties: And whereas it was provided by the 27 Hen. 8, c. 24, s 5, that justices of assize to be made and assigned within the County Palatine of Lancaster should be made and ordained by Commission under the King's usual Seal of Lancaster, and in pursuance of the said proviso one chief justice and one other justice, being respectively Judges of the Superior Courts at Westminster, have been from time to time constituted and ordained, by grants contained in separate Letters Patent under the Seal of the County Palatine of Lancaster: And whereas it is expedient to make further provision for assimilating the practice of the said County Palatine of Lancaster to that of other counties, with respect to the trial of issues from the Superior Courts of Common Law at Westminster: Be it declared and enacted, as follows: It shall be lawful for her Majesty, her heirs and successors, hereafter to issue commissions of assize under the Seal of the County Palatine of Lancaster directed to the Judges appointed for the time being to the respective offices of Chief Justice and Justice of Common Pleas within the said County Palatine of Lancaster, and to such of her Majesty's counsel learned in the law, serjeants and barristers-at-law, having patents of precedence, or precedence within the Bar, of the County Palatine of Lancaster, and other serjeants-at-law to be from time to time selected for that purpose, authorising and commanding them to take all the assizes, juries, and certificates, before whatever justices arraigned, in the said county of Lancaster, in like manner and with the like effect as such commissions are issued into other counties, together with the like writs or commissions of association, and other writs and proceedings, as in other counties, and that every person so authorised shall have the

like power to be and act as a Judge or Commissioner of Assize for the trial of issues from the Superior Courts of Law at Westminster and other issues in the said County Palatine of Lancaster as any person so authorised has in any other county, and shall also be deemed to be authorised by such commission, and shall thereby have full authority to act as a Judge for the trial of any issues of fact in any causes depending in the said Court of Common Pleas at Lancaster: Provided, and it is declared, that nothing herein contained shall deprive the chief justice or justice appointed or so ordained as aforesaid by grant contained in Letters Patent of any authority of jurisdiction to try issues from the Superior Courts at Westminster and other issues in the said County Palatine of Lancaster, and that all trials of such issues heretofore had or to be had before such chief justice or justice constituted or ordained as aforesaid shall be deemed to have been and to be tried by competent authority, and that the acting prothonotary for the time being of the Court of Common Pleas at Lancaster shall continue to officiate as associate in the said County Palatine of Lancaster, as heretofore, and shall accordingly be named in such commissions of association and other writs and proceedings.

## BILLS OF EXCHANGE AND PROMISSORY NOTES BILL.

### LORD BROUGHAM'S PROPOSED CLAUSES.

ALTHOUGH this Bill has passed both Houses, and received the Royal Assent, it may be useful to state the amendments which were moved by Lord Brougham on the third reading of the Bill. They were as follow:—

“(A.) All bills of exchange and promissory notes shall for the purposes of this Act, as hereinafter provided, be noted, or noted and protested, as in the case of foreign bills of exchange.

“(B.) It shall be lawful for the holder of a bill of exchange or promissory note which has on the day of its becoming due been noted for nonpayment, and which bill of exchange or promissory note is free from erasure or alteration in any material part, except by striking out the name or names of an indorser or indorsers, to proceed under the provisions of this Act, hereinafter contained, at any time after protest for non-acceptance or for nonpayment, and before the expiration of six months after the day of such bill or note becoming due; provided such holder shall on or at any time previous to the day of such bill or note becoming due have been the holder thereof, or liable for the amount of the same.

“(C.) In each of the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas, the junior Master shall be the registrar of protested bills of exchange and promissory

notes, and shall keep a register for the registration of protested bills of exchange and promissory notes.

“(D.) Every holder of a dishonoured bill of exchange or promissory note which is free from erasure or alteration in any material part, except as aforesaid, may, after protest, register such bill of exchange or promissory note in the register of any of the aforesaid Courts, and shall thereupon be entitled to an order of such Court, on such bill of exchange or promissory note, against the acceptor of such bill or the maker of such note, for payment of the same, with interest and costs, within 12 days after service of such order, inclusive of such service; and such order shall be issued and signed by the registrar of protested bills of exchange and promissory notes of the Court in which such bill or note is registered, and shall be in the form contained in schedule C. to this Act annexed; and upon the expiration of such 12 days after personal service of such order on such acceptor or maker, or after an order for leave to proceed, in the same manner as provided by the Common Law Procedure Act, 1852, in the case of writs of summons, without such payment having been made as aforesaid, or without leave obtained to appear and defend, as has been hereinbefore provided in cases where a summons under this Act has issued on any bill of exchange or promissory note, the said order shall have the effect of a judgment against such acceptor or maker, and may be registered as such, and execution may issue thereon against such acceptor or maker, on affidavit of the service of such order, or of having proceeded according to leave obtained, which affidavit shall be endorsed on such order or annexed thereto: Provided always, that where leave has been obtained to appear and defend, the holder of such bill or note shall declare thereon against the acceptor or maker, in the same manner as if the appearance entered by such leave had been to a writ of summons, and such order on such leave obtained shall in all respects be treated as a writ of summons: Provided also, that after judgment the Court or a Judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and may give leave to appear to the order, and to defend the action, if it shall appear to the Court or Judge reasonable so to do, and on such terms as to the Court or Judge may seem just.”

## LAW OF ATTORNEYS AND SOLICITORS.

### COSTS OF FILING BILL ON INSUFFICIENT RETAINER.

THE executors of a testator, who died in 1821, neglected to prove his will or to give any account, and in 1852 the plaintiff gave to Mr. B. a written retainer as follows:—  
“I, ———,” &c., “do hereby appoint you

my solicitor, and authorise and request you to proceed against the trustees and executors of my late father's will to obtain the probate thereof, and to take such proceedings as may be considered expedient to obtain an account of the trust property under my said father's will." Proceedings were, in the month of June, instituted in the Ecclesiastical Court, and the executors took in an account, but which would have been unsatisfactory in this Court, and in February, 1852, the suit was dismissed.

In January, 1855, Mr. B. filed this bill for an account as solicitor for the plaintiff, but without further consulting the plaintiff, who now (May 5th, 1855) moved to take the bill off the file.

The Vice-Chancellor *Kinderley* said:—

"The question is here, whether there was a written retainer to the solicitor; if not, has there been any acquiescence on the part of the plaintiff? On the latter point, I am clearly of opinion there was not sufficient acquiescence to bind him, if there was no written retainer. The question is then singly the effect of the retainer of the 29th May, 1852, and I agree it must be construed by itself; but still it must be construed with reference to the surrounding circumstances. Now, it is the duty of a solicitor to obtain a written authority before he commences a suit, and that written authority ought to be sufficient and explicit. It is not sufficient that he obtain an authority to take proceedings to *get an account*; it must be an authority to institute a suit; and a solicitor does not do his duty if he obtains an instrument which is vague and indefinite, on which he can act or not as he likes, and say—'This is an authority, and whenever it suits my convenience I will act on it.'

"Now, what were the circumstances by which the parties were surrounded when the instrument was given. The testator, whose estate is sought to be administered, died in 1821." . . . "At the time when this instrument was given, the executors (improperly I will assume) had not proved the will. They do not appear up to the year 1852 to have kept any sort of account for showing the state of the testator's estate. It was known that no probate had been obtained, and that no account had been rendered; and in that state of things *Atkinson* gives this retainer to B., and it must be construed by reference to that state of things."

"Now it is said that the Ecclesiastical Court could have nothing to do with the administration of the personal estate, and therefore that the instructions to take proceedings must mean taking proceedings in this Court. That may possibly be the construction that would be put on it by a professional man, but is certainly not the construction that would present itself to the mind of any unprofessional person, at any rate to the mind of such a person as the

plaintiff, who it is stated is in humble circumstances and an uneducated man. But if B. meant that, he should have taken care to make it unambiguous. It is no more than an authority to get the will proved and to obtain an account; if B. had applied to the executors, and they had rendered one, the terms of the authority would have been satisfied; and when B. had an account rendered in the Ecclesiastical Court, and found it, as it clearly was, unsatisfactory, he never took any further steps; he abstained from any proceedings of any kind till January, 1855, and, as far as appears, never had one word of consultation with his client in which any mention was made of obtaining an account from the executors and filing this bill. He has thus put his own construction on the retainer; for if that is not the true construction, if the construction was that he was to enforce an account, he would have been guilty of a gross neglect of his duty to his client, which I will not impute to him, in delaying all proceedings so long.

"I am of opinion that there is nothing in the retainer to authorise the filing of this bill. If a solicitor rests as he ought on a written retainer as his authority for filing a bill, he ought to have it explicitly stated. I think this retainer did not justify the filing of the bill, and that there has been no acquiescence to bar the right of the plaintiff to object to it."

The bill was ordered to be dismissed as in *Allen v. Bone*, 4 Beav. 493, with costs to be paid by the solicitor. *Atkinson v. Abbott*, 3 Drewry, 251.

## LAW OF COSTS.

### OF ACTION AT LAW, WHERE PLAINTIFF ELECTS TO PROCEED IN EQUITY.

THE plaintiff, in April, 1854, commenced an action at law against the defendant, to recover the price of certain fixtures sold and delivered by him and for the use and occupation of certain premises, and he also filed a special claim in equity for the specific performance of an agreement to take a lease of the same premises.

The plaintiff, in accordance with an order of the Vice-Chancellor, obtained by the defendant for that purpose, elected to proceed in equity, and the record was withdrawn by consent.

*Crowder, J.*, at Chambers, thereupon ordered that the costs incurred by the defendant should be referred to the Master for taxation, and the amount found to be due should be paid by the plaintiff to the defendant.

The Court rescinded the order, and held, that the defendant's remedy, if any, was by application to the Court of Chancery. *Simpson v. Sudd*, 16 Com. B. 26.



## JURIDICAL SOCIETY.

WE reported concisely last week the proceedings at a recent meeting of the Juridical Society, which was founded on the 10th of Feb. 1855, and are now enabled to state the objects of the society and its mode of proceeding.

The objects and general plan of the society are as follow :—

"The objects of the Society are to advance the study and develop the science of Jurisprudence; to promote the investigation of subjects having a relation to Law, socially, morally, or politically; and especially to encourage and assist inquiry concerning the sources, forms, and results of the Laws of the United Kingdom.

"The Society proposes to effect these objects chiefly by bringing together its members in periodical meetings, at which papers will be read by members, voluntarily, on subjects of their own choosing, within the description above given; and by printing, circulating among its members, and publishing a selection of those papers.

"It is not an object of the Society to afford opportunity for the reading of papers treating of points of modern Law in a merely professional or technical manner, or with reference to any merely professional or technical conclusion.

"The Society shall consist of members and associate-members.

"Members of the English Bar, of the College of Doctors of Law in London, of the Faculty of Advocates in Scotland, and of the Irish Bar, and Special Pleaders, shall be eligible as members of the Society.

"Other persons, being distinguished in literature or science, or qualified and desirous to co-operate in promoting the objects of the Society, but not members of the Legal Profession, shall be eligible as associate-members of the Society."

It will be observed that, according to the present rules of the society, attorneys, solicitors, and proctors are not eligible as members; but this part of the plan will probably be amended.

The course of proceeding at the meetings of the society is thus laid down :—

"A member or associate-member desiring to read a paper before the Society, shall communicate his desire to the Council, through the Honorary Secretaries, stating generally the subject and scope of the paper; and no paper shall be read before the Society until the Council shall have sanctioned the reading of it and appointed an evening for that purpose.

"Notice of the subject of the paper appointed to be read at any meeting shall be given to the Society generally by the Honorary Secretaries, in cases when and as soon as it may be practicable.

"At each meeting, immediately after the adoption of the minutes of the last preceding meeting, the paper appointed by the Council to be read on that evening shall be read by the author, or some one on his behalf, or one of the Honorary Secretaries.

"After the reading of the paper, the subject-matter of it may be discussed by the meeting, under the control and direction of the Chairman, and according to the usual course of debate; and no paper shall be entered on the proceedings without a vote of the meeting to the effect.

"Although the Society does not desire to bind its members by strict rules on the following points, it considers it to be convenient in practice that ordinarily the reading of a paper should not occupy a longer time than three-quarters of an hour; that each person taking part in a discussion on a paper should confine his observations within the limit of ten minutes; and that the proceedings of a meeting should be concluded within two hours and a half from its commencement.

"The Society shall have the right of printing, re-printing, circulating, and publishing from time to time, according to its ordinary course of printing and publication, any paper read before it, subject to which right the author's right of property in the paper will be unaffected.

"A selection of the papers read before the Society, together with a brief abstract of such observations contributed at the meetings as may tend to elucidate the subjects treated in the papers, shall be printed and published in the name and on behalf of the Society in periodical or occasional parts or numbers, forming together a volume in each year, under the title of 'PAPERS ON JURISPRUDENCE, by members of the Juridical Society.'

"The Council shall have the power of selecting the papers to be printed or published, and, subject to the last preceding rule, of regulating all matters connected with the time, mode, and form of the printing, circulation, and publishing of the papers, and with the terms upon which the members and associate-members shall be entitled to the papers printed, and upon which the same, or any of them, may be obtained by the public, and with the presentation of copies to libraries, learned and scientific bodies, and individuals interested in the objects of the Society.

"The Author of any paper read before the Society and printed shall be entitled to receive, free of expense, any number of copies not exceeding twenty-five."

The meetings are held on the first and third Mondays of each month, from November to July inclusive; and an anniversary meeting on the third Monday in February. The rules of the society contain the usual regulations as to the election of office bearers and members, and the payment of entrance fees and subscriptions, which appear to be very reasonable.

## POST-OFFICE REGULATIONS.

### TRANSMISSION OF PERIODICAL PUBLICATIONS AND PRINTED PAPERS.

SEVERAL Treasury Warrants have been issued relating to the transmission by post of printed papers, and (since the abolition of the newspaper stamp) the terms on which periodical publications may be sent by post. The following extracts from the *London Gazette* will show the existing regulations:—

#### “TRANSMISSION OF PERIODICAL PUBLICATIONS.

“On and after the 30th June, all periodical publications, including newspapers, which shall be published in the United Kingdom at intervals not exceeding 31 days, and which shall bear a stamp or stamps denoting the stamp duty, of the kind hitherto confined chiefly to newspapers, may be transmitted and re-transmitted through the post within the United Kingdom, free from postage under the following regulations, viz.:—

“They will be subject to the same restrictions with regard to the number of sheets and superficial extent as are now applicable to newspapers so called—

“These restrictions are shown in the following Table:—

Amount of Stamps impressed on the Publication.	Maximum No. Sheets.	Maximum superficial extent of Letter Press on one Side.
One penny . .	2	2,295 inches.
Three half-pence	3	3,443 ”
Two pence . .	4	4,591 ”

“No publication or portion thereof will be allowed to pass through the post unless it bear at least a stamp of the value of 1d.

“2. The title and date of the publication must be printed at the top of every page.”

“3. The publication must be folded in such a manner that the whole of the stamp or stamps denoting the full duty shall be exposed to view and be distinctly visible on the outside.

“4. It must not be printed on pasteboard or cardboard, or on two or more thicknesses of paper pasted together, nor must any pasteboard, cardboard, or such pasted paper be sent with it as a back or cover thereto, or otherwise.

“5. It must be posted within 15 days from the date of publication.

“6. It must either have no cover, or a cover open at the ends.

“7. It must contain no inclosure.

“8. It must have no writing or other mark thereon, but the name and address of the person to whom it is sent, nor anything on the cover but such name and address, the printed title of the publication, and printed name and address of the publisher or vendor who sends it.

“9. If the publication be addressed to any person within the free delivery of the place where it is posted, it will be liable to a postage of one penny, which must be pre-paid by affixing a postage stamp.

“The free delivery of London, so far as applies to this rule, extends to such places only as are within three miles of the General Post-Office.

“10. If any of the above regulations be disregarded, the publications will be detained for examination till the next mail.

“If it is found that the irregularity consists merely in not folding the paper so as to expose the stamp or stamps, a postage of one penny will be charged in addition to any other postage to which the publication, if properly folded, would have been liable. In case of any other irregularity, the publication will be dealt with in accordance with the regulations applicable to the book-post.

“11. It is suggested that every publication should have a notice to purchasers conspicuously printed, pointing out the necessity of exposing the stamp or stamps to view, whenever the publication is sent through the post.

“12. Unstamped publications, or stamped publications which have been issued more than 15 days, can be forwarded within the United Kingdom, and to most of the Colonies under the regulations of the book-post.

“13. Newspapers and other periodicals published in the islands of Guernsey, Jersey, Alderney, Sark, and the Isle of Man, will be subject to the same regulations as those which are published in other parts of the United Kingdom.

“14. The regulations under which stamped newspapers may be sent through the post to foreign countries and British Colonies will form the subject of a separate notice.

(Signed) “ROWLAND HILL,  
“June, 1855.” “Secretary.”

### TRANSMISSION OF BOOKS, PUBLICATIONS, &c.

By Treasury warrant of 4th June, 1855, all packets consisting of books, publications, or works of literature and art, posted in the United Kingdom, may be transmitted by the post within the United Kingdom, subject to the several rates and regulations hereinafter contained; that is to say:—

On every such packet, if not exceeding four ounces in weight, there shall be charged and taken one uniform rate of postage of one penny.

If exceeding four ounces and not exceeding eight ounces one uniform rate of postage of two pence.

If exceeding eight ounces, and not exceeding one pound, one uniform rate of postage of 4d.

If exceeding one pound, and not exceeding one pound and a half, an uniform rate of postage of 6d.

If exceeding one pound and a half, and

the pleasure of the high bailiff, or to be suspended or dismissed by the Judge.

This officer is remunerated by the fees allowed by the Statutes and the Secretary of State's order in respect of the proceedings of the Court. He is bound to provide for the execution of the duties of the office out of the fees thus allowed. The Government has power to put this officer on salary.

#### TREASURER.

The treasurer is an officer of the County Court appointed by the Commissioners of her Majesty's Treasury, and removable at their pleasure. No special qualification appears to be necessary to enable a person to accept this office. He is bound to give security for the same matters as the clerk or high bailiff. The number of these officers is 23.

The treasurer cannot act as an attorney or agent directly or indirectly for any party in any proceeding in the Court.

To each is assigned a certain number of districts within which his duties are to be performed. These duties consist in auditing half-yearly, quarterly, or oftener if necessary, the accounts of the clerk of the Court connected with the ordinary duties of his office, as well as those incident to the office of registrar and official assignee in protection cases; in receiving the balances of the various moneys properly to be paid over to him in paying the Judges their salaries and travelling expenses; in disposing of the balance remaining in his hands, as directed by the Commissioners of Treasury; and in submitting annually to the Audit Board an account of his receipts and disbursements, with proper vouchers in respect of them. The account is then audited, and a statement of it is transmitted to the Commissioners of the Treasury, who, after considering it, give directions as to the making up and passing of the account. It is then signed by two Commissioners of Audit, who are empowered to sign a certificate in the nature of a *quibus*, which operates as an effectual discharge to the treasurer and to all other intents and purposes. Besides the duties already described peculiarly relating to the supervision of the clerk's accounts, other duties devolve on the treasurer with reference to the Courts. He is required, with the approval of one of the Secretaries of State, to build, purchase, hire, or otherwise provide, messuages and lands, with all necessary appurtenances, for holding the Court, and for the offices connected therewith; or, instead of providing separate buildings, he may contract with the proper persons for the use and occupation of such hall or other building as may be necessary for the purpose of the Court and officers, and subject to such conditions as to rent and repairs, alterations and improvements, as may be agreed on. He is also empowered, with the consent of the Commissioners of the Treasury, to borrow money at interest for the above purposes; and such contracts are binding on him and his successors in office. All the real and personal

property belonging to the Court are vested in the treasurer for the time being and his successors in trust for the purposes of the Court.

The remuneration of this officer is by a salary determined as to its amount by the Lords Commissioners of the Treasury, and that salary was originally charged on the Consolidated Fund, but is now voted annually; the salary varies in amount from 550*l.* to 700*l.* Besides his salary, he receives certain allowances for his travelling expenses incurred in proceeding to the several Courts on his audit.

No two of the offices of clerk, high bailiff, and treasurer can be held by the same person.

### LAW ASSOCIATION FOR THE BENEFIT OF WIDOWS, &c.

#### ANNUAL REPORT OF THE DIRECTORS.

May 10, 1855.

LAWRENCE DESBOROUGH, Esq., is the Chair.

"The income of the Association has, in the preceding year, amounted to 1,419*l.* 9*s.*, and from the increased interest which during the year has been excited in favour of the Institution, the Directors cannot but hope for a continued addition to those resources which are so essential to its well-being.

"Thirty-eight years have now elapsed since the establishment of the Association, and the Directors feel much gratified in contemplating the amount of good which it has effected. During that period the number of families of members to whom assistance has been granted, amount to 48, including altogether 170 individuals, and involving an outlay of 19,805*l.* 15*s.* 8*d.* Of non-members' families, amounting to 104 in number, 362 persons have received pecuniary aid, amounting to 4,435*l.* 2*s.*, thus showing an aggregate sum of 24,240*l.* 17*s.* 8*d.* expended in relief.

The Life Subscriptions with a donation received during the year amount to 194*l.* 19*s.*, which sum constitutes a portion of the balance in the hands of the Treasurer, and has, in pursuance of the fifty-ninth law of the Association, been added to the capital.

"The Directors in referring to the expenditure during the year, in the relief confided to their distribution, have to state that the sum thus applied amounts to 1,175*l.* 10*s.* Although the members at large will, no doubt, unite with the Directors in deeply lamenting the causes by which so heavy a demand on the pecuniary resources of the Association has been occasioned, they will, at the same time, congratulate themselves and the Profession, that they have had the power of alleviating the wants of so many, who, unfortunately, required assistance.

"During the past year, two instances have

occurred of petitions in respect of deceased members, the particulars of which afforded a new proof of the value and utility of the Institution.

"In one case, the member had been generally considered to be in good circumstances, but, at his death, he left two daughters entirely unprovided for, and the assistance afforded by the Board was most salutary and efficient.

"Since the last Report, two of the permanent applicants of the primary class have died; and one having withdrawn on account of improved resources, the prospective annual expenditure has been thereby reduced by the amount of 80*l*.

"In two other cases the Board have, under pressing circumstances, made additions to the customary allowances.

"In one instance, the Directors have assisted a Life Member of upwards of twenty years' standing, and with a numerous family, who, by adverse circumstances, against which he had struggled for some years, was at length compelled to lay his case before the Board. The applicant has expressed his deepest gratitude for the prompt and liberal aid afforded, and pledges himself to return the amount at a future time, if it shall hereafter be in his power to do so.

"By the resolution of the Court in May last, the Board was authorised to expend 200*l*. for the purpose of relieving cases not within the rules relating to the families of members; and, in consequence of this permission, they have expended in this species of aid the sum of 198*l*., thus making the amount allowed to non-members' families, since the establishment of the Association, 4,435*l*. 2*s*., but only one such case has come before the Board during the year.

"The cases of this description relieved during the last year amount to 32, including 81 individuals.

"During the year the widows of two non-members have died.

"The Directors have to call the attention of the members to another class of cases, peculiarly within the control of the General Court, viz., those in which a non-member, for whose family assistance is sought, is still living. For some years two cases of this description have been annually relieved by the General Court; but, during the year, the death of one has occurred, whose widow and family will now come before the Board in the ordinary way; and, in the other, it remains for the Court to consider a grant for the ensuing year.

"In consequence of the lamented death of Mr. Thomas Clarke, a Trustee, it devolves upon the members now assembled to appoint his successor.

"A purchase of 200*l*. new 3 per cents. has

lately been made by the Directors, thus increasing the capital to 21,800*l*. in that stock.

"The Directors have much pleasure in stating that 32 new members have been enrolled during the past year.

"In conclusion, the Directors desire to urge upon the members at large the advantage which must result from a general zeal and activity on their part in promoting the interests of this truly benevolent Institution.

(By order of the Board),

JOHN MURRAY, *Secretary*.

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act with dates when gazetted.*

Anstie, Bernard, Liskeard, in and for the county of Cornwall. June 29.

Bolton, John Henry, New Square, Lincoln's Inn, in and for the county of Middlesex, also in and for the city and liberties of Westminster, and also in and for the city of London. July 17.

King, John Wardale, Walaham le Willows, in and for the county of Suffolk. July 6.

Murray, William, London Street, Fenchurch Street in and for the city of London, also in and for the county of Middlesex, and also in and for the city and liberties of Westminster.

Thorneley, James, Liverpool, in and for the county of Lancaster. July 13.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 26th June, to 20th July, 1855, both inclusive, with dates when gazetted.*

Ansdell, John, and Thomas Haddock, St. Helens, Attorneys and Solicitors. July 3.

Bickerstaff, John, and Miles Myres, Preston, Attorneys and Solicitors. June 29.

Cornish, Thomas Charles, and Thomas Saunders Parnell, Bristol, Attorneys and Solicitors. July 20.

Hall, Henry, and George Taylor, Ashton-under-Lyne and Stalybridge, Attorneys and Solicitors. June 29.

Lowndes, Matthew Dobson, James Robinson, and William Gandy Bateson, Liverpool, Attorneys and Solicitors, so far as regards the said James Robinson. July 3.

### COUNTRY COMMISSIONER TO ADMINISTER OATHS IN CHANCERY.

*Appointed under the 16 & 17 Vict. c. 78, with date when gazetted.*

Woodford, George Augustus, Castle Cary and Ilminster. July 13.

## NOTES OF THE WEEK.

## FURTHER POSTPONEMENTS OF LAW BILLS.

SINCE our last notice of the state of the Bills in Parliament relating to the Law, the following measures have been postponed voluntarily, or withdrawn by compulsion:—

In the *House of Lords*,—The Amendment of the Law of Mortmain; Abolition of the Oath of Abjuration—designed for the relief of the Jews; Law of Landlord and Tenant in Ireland; Law of Mortmain.

In the *House of Commons*,—Powers under Improvement of Land Acts; Assizes and Sessions; Public Health; The Six Bills relating to the Irish Court of Chancery; Marriage Law Amendment; Scottish Bankruptcy Law Consolidation; Acts of Parliament Amendment; Medical Profession.

## APPEALS TO LORDS JUSTICES.

The Lords Justices directed notice to be issued from the Registrar's Office that they do not intend to hear during the present sitting any appeals set down after the appeal of *Hope v. The Corporation of Gloucester*.—24th July.

## NEW MEMBERS OF PARLIAMENT.

*Berkeley, Charles Lennox Grenville, Esq.*, for Cheltenham, in the room of the Hon. Craven Fitzhardinge Berkeley, deceased.

*Holland, Edward, Esq.*, for Evesham, in the room of Charles Lennox Grenville Berkeley, Esq., who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

*Stacey, Henry Josias, Esq.*, for the Eastern Division of the county of Norfolk, in the room of Edmond Wodehouse, Esq., who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

## LAW PROMOTION.

This day (21st July) the Right Honourable Sir William Henry Maule, Knight, was by her Majesty's command sworn of her Majesty's most Honourable Privy Council, and took his place at the Board accordingly.—From the *London Gazette* of 24th July.

## LAW APPOINTMENTS.

Mr. Henry Minett, Solicitor, has been appointed Clerk to the Ross Union.

Mr. William Burra Arnsion, Solicitor, Penrith, has been appointed Clerk of the Petty Sessional Division of Westward Westmoreland, in the room of Mr. Holmes, deceased.

Mr. George Marsland, Solicitor, Bolton-le-Moors, has been appointed Clerk to the Burial Board of Atherton.

Mr. George James Murray, Solicitor, Oldham, has been appointed Clerk to the Magistrates at Saddleworth, in the room of Mr. Henry Radcliffe, deceased.

The Queen has been pleased to appoint William H. Marsh, Esq., to be Crown Solicitor, and Nicholas Gustave Bestall, Esq., to be Senior District Magistrate for the Island of Mauritius.—From the *London Gazette* of 17th July.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Lords Justices.

*Twynam v. Hudson.* July 18, 1855.

PEREMPTORY ORDER ON MEMBER OF PARLIAMENT TO PAY MONEYS PURSUANT TO DECREE.

*Order under the 12 & 13 Vict. c. 106, s. 73, against a member of Parliament, for payment on August 10, of moneys directed to be paid by the decree in a suit,—upon motion with notice, supported by an affidavit of service of decree, and demand and non-payment of the moneys.*

THIS was a motion pursuant to leave (reported ante. p. 231) to fix a peremptory day, under the 12 & 13 Vict. c. 106, s. 73,<sup>1</sup> for the

payment by the defendant of certain moneys, directed by the decree of Vice-Chancellor Stuart to be paid.

*Malins and Rosburgh* in support, on an affidavit of service of the decree, and demand and nonpayment of the money.

*E. K. Karslake, contra.*

The Lords Justices granted the application, fixing Aug. 10 next.

## Master of the Rolls.

*Esparte Robert Crook Ramsey.* July 6, 1855.  
SOLICITOR.—COSTS ON SALE UNDER DE-

<sup>1</sup> Which enacts, that "if any decree or order shall be pronounced in any cause depending in any Court of Equity, or any order shall be made in any matter of bankruptcy or lunacy, against any such trader, ordering such trader to pay any sum of money, and such trader shall disobey such decree or order, the same having been duly served upon him, the person entitled to receive such sum under such decree or order, or interested in enforcing the pay-

ment thereof pursuant thereto, may apply to the Court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last-mentioned order seven days before the day therein appointed for payment of such money, shall neglect to pay the same, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after the service of such order."

**CREE.—SECOND COPY OF ABSTRACT OF TITLE.**

*On a sale under a decree, the abstract of title was laid before a conveyancing counsel to advise as to title and the conditions of sale. Counsel made several observations on the abstract and certain queries: Held, that the solicitor was not entitled, as there were no special circumstances, to a fee on perusing and answering the same, but that its allowance was in the discretion of the Taxing Master.*

*Held, also, he was only entitled to the costs of copying such sheets as were written on, and not to a second copy of the whole abstract for delivery to the purchaser.*

It appeared that previous to the sale of certain property in pursuance of a decree under the 15 & 16 Vict. c. 86, s. 56,<sup>1</sup> the abstract of title was laid before a conveyancing counsel, to advise as to title and the conditions of sale, and that he made several queries on the abstract to be answered before the conditions were drawn. The petitioner answered these queries and afterwards made a second fair copy abstract for delivery to the purchaser. The Taxing Master having disallowed the charge of one guinea for perusing and considering the queries and answering the same, and only allowed for re-copying the sheets of the abstract on which counsel's queries were made, this petition was presented to review the taxation.

*Waller in support.*

The Master of the Rolls said, the question was, whether the solicitor was to be allowed for making a second copy of the abstract in addition to the one for the purchaser. In point of fact, counsel now performed the work formerly done by the solicitor, who, however, still charged for drawing the abstract and conditions of sale. A second copy should not, therefore, be allowed, as a matter of course, although special cases might arise in which it would be proper. But any sheets rendered useless by the notes of counsel would have to be re-copied, and for which the charge would be allowed. With respect to the charge for answering the queries, it was in the discretion of the Taxing Master to allow something, where they involved trouble and difficulty. There was, however, nothing special in the present case, and the decision of the Master would be affirmed.

<sup>1</sup> Which enacts, that "before any estate or interest shall be put up for sale under a decree or order of the Court of Chancery, an abstract of the title thereto shall, with the approbation of the Court, be laid before some conveyancing counsel to be approved by the Court, for the opinion of such counsel thereon, to the intent that the said Court may be the better enabled to give such directions as may be necessary respecting the conditions of sale of such estate or interest, and other matters connected with the sale thereof."

**Vice-Chancellor Kindersley.**

*Fanshawe v. Walker.* July 18, 1855.

**SUIT FOR THE ASSIGNMENT OF PATENT.—COSTS.**

*Where the decree in a suit for the assignment by the defendant of letters patent, declared that the original patentee was a trustee for the plaintiff: Held, that such patentee was entitled to his costs as between solicitor and client, to be paid by the plaintiff, and the defendant having obtained possession of the letters patent and refused to give up possession, was held liable to the costs of the assignment.*

In this suit for the assignment of certain letters patent, obtained by a Mr. Freeman, a decree had been made for such assignment, on the terms of the plaintiff granting the defendant, who had obtained possession of and refused to give up the patent, a license to work the same, in pursuance of an agreement entered into between them. On the question of costs,

The Vice-Chancellor said, that as the decree declared Freeman a trustee for the plaintiff, he must have his costs as between solicitor and client, to be paid by the plaintiff, and the defendant must pay the costs of the assignment for the patent.

**Vice-Chancellor Stuart.**

*Sumner v. Strachan.* July 21, 1855.

**LEASE TO PLAINTIFF AND TESTATOR JOINTLY.—ORIGINAL NEGOTIATION WITH PLAINTIFF.—WILL.—ELECTION.**

*The plaintiff had applied to the lessor for a lease of certain premises and a draft lease was prepared by the lessor's solicitor at the testator's request, demising the premises to the plaintiff and himself jointly, and the testator afterwards, by his will, gave the premises in question, describing them as held of such lessor, to the plaintiff: Held, that as the original negotiation was with the plaintiff alone, no case of election arose.*

THE testator, by his will, gave to the plaintiff all the messuages or tenements together with the stock and crops, &c., at Acton, which he held of Mr. George Robinson. It appeared that the plaintiff had applied for a lease in 1848, and that a draft lease had been prepared by Mr. Robinson's solicitor, at the testator's request, demising the property in question for 21 years from 1848, to himself and the plaintiff jointly, but that neither he nor the plaintiff executed the lease, although duly signed by Mr. Robinson. The plaintiff, after the testator's death, accepted a lease for 17 years from November, 1853. The question now arose, whether she was bound to elect.

*Makins and Shebbeare* for the plaintiff; *F. G. A. Williams* for the children; *Selwyn* for other parties.

The Vice-Chancellor said, that as the origi-

nal negotiation for the lease was with the plaintiff alone, no case of election had arisen.

### Vice-Chancellor Wood.

In re *Witheringham's Trusts*. June 7, 1855.

**TRUSTEE.—CONVEYANCE BY.—PETITION.  
—ANNUITANTS ON ESTATE.—PARTIES.**

A testator devised real estates subject to annuities for the joint lives of his wife and his daughter and the survivor of them. The widow of his grandson became entitled to the fee simple, and on her marriage gave notice to the remaining trustee to convey to the trustees of her settlement under the 15 & 16 Vict. c. 56, s. 2, which they omitted to do within the time limited on the ground of the annuitants refusing to consent: On petition for the purpose, held that the annuitants were not necessary parties, and an order was made.

THE testator by his will devised a real estate to trustees, subject to an annuity of 100l. a year for the joint lives of his wife and his daughter, and the survivor of them, and to the payment of certain legacies (which he directed to be paid out of the rents). The widow of the testator's grandson having become entitled to the property, notice had been given to the surviving trustee under the 15 & 16 Vict. c. 56, s. 2,<sup>1</sup> to convey to the trustees of her settlement on her intended second marriage, and on their refusal upon the ground of the annuitants declining to consent, this petition was presented.

*Rolt* and *Fooks* in support; *Bagshawe* and *Pole* contra, on the ground the annuitants had not been made parties or served.

The Vice-Chancellor said, that the consent of the annuitants was unnecessary, and granted

<sup>1</sup> Which enacts, that "sections numbered 17 & 18 in the Queen's printer's copy of the Trustee Act, 1850, be repealed; and in every case where any person is or shall be jointly or solely seised or possessed of any lands or entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly authorised agent of such last-named person, requiring such trustee to convey or assign the same, or to release such contingent right, it shall be lawful for the Court of Chancery, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey or assign the said lands for the space of 28 days after such demand, to make an order vesting such lands in such person, in such manner and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands, or a release of such right, in the same manner and for the same estate."

the petition accordingly—the deed to be settled at Chambers in case of difference.

### Court of Exchequer.

*Elliot v. Bishop*. July 5, 1855.

**COMMON-LAW PROCEDURE ACTS.—SPECIAL CASE.—COSTS ON ERROR.**

On error under the 17 & 18 Vict. c. 125, s. 32, from a special case stated under the 15 & 16 Vict. c. 76, s. 46, the Court of Error affirmed the decision of the Court below in favour of the plaintiff as to one question at issue, and reversed the decision for the defendant as to the other, and deciding for the plaintiff on the whole case: Held, that the Taxing-Master must tax in pursuance of such decision, which would give the plaintiff, in the Court below, the costs of the part of the case on which he was there unsuccessful.

THIS was a rule nisi for the reviewal of the taxation of the costs in this special case, as to the plaintiff's right to certain trade and tenant's fixtures, under the 15 & 16 Vict. c. 76, s. 46,<sup>1</sup> and from the decision in which error had been brought under the 17 & 18 Vict. c. 125, s. 32.<sup>2</sup> It appeared that the Court of Error affirmed the judgment for the plaintiff as to his right to the trade fixtures, but had held that he was also entitled to the tenant's fixtures. No order was made as to costs, and the question arose whether the plaintiff was entitled to the costs in the Court below as to his claim for the tenant's fixtures. The Master having disallowed such costs, this rule had been obtained.

*Macle* showed cause; *Bovill* in support.

*Cur. ad. vult.*

The Court said, that the Master must tax the costs according to the judgment of the Court of Error. The defendant in error would therefore have his costs in the Court below upon the part of the case relating to the tenant's fixtures in which he was unsuccessful, but as this Court had strictly speaking nothing now to do with the case, the rule must be discharged.

<sup>1</sup> Which enacts that, "the parties may, after writ issued, and before judgment, by consent, and order of a Judge, state any question or questions of law in a special case for the opinion of the Court, without any pleadings."

<sup>2</sup> Which enacts that, "error may be brought upon a judgment upon a special case in the same manner as upon a judgment upon a special verdict, unless the parties agree to the contrary; and the proceedings for bringing a special case before the Court of Error shall, as nearly as may be, be the same as in the case of a special verdict; and the Court of Error shall either affirm the judgment or give the same judgment as ought to have been given in the Court in which it was originally decided, the said Court of Error being required to draw any inferences of fact from the facts stated in such special case which the Court where it was originally decided ought to have drawn."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“Still attorneyed at your service.”—*Shakespeare*

SATURDAY, AUGUST 4, 1855.

### STATE OF THE REMAINING LAW BILLS.

It has been announced by the Prime Minister from his place in Parliament, that the Session will close on the 14th or 15th August; we therefore proceed to notice the state of the measures in both Houses which yet remain for consideration.

In the House of Lords, Lord Brougham, on moving for returns connected with Trials at the Sessions and Assizes, observed, that the Bill which had passed that House for extending the *Jurisdiction of Quarter Sessions* and Petty Sessions, had not passed the other House. This is the Bill upon which some remarks were made by Mr. Warren, in his recent charge to the Grand Jury of Hull.<sup>1</sup>

The Lord Chancellor said, he had no apprehension of the Summary Jurisdiction Bill not passing. It was merely suspended for a time until the House of Commons passed those Bills which had yet to come before their Lordship's House. It had passed through a Select Committee, had received various amendments, and had been re-committed in the other House. He had every confidence of its becoming law this Session. Another Bill for consolidating several Counties together for the purpose of Criminal Trials, he believed, would not pass.

Now it is certainly open to the observation made by Mr. Warren, that these alterations, which will probably have the effect of materially diminishing the business at each Session, may render it not worth the while of a sufficient number of members of the Bar to attend the additional Sessions,

and “afford the Court their assistance, whilst they themselves acquire knowledge of the practice of an honourable Profession.” Whether the other Bill, to which the Lord Chancellor referred for consolidating several adjoining counties, would prevent this evil consequence, we are not at present prepared to discuss. It would, of course, diminish the number of places at which Sessions are now held, but whether the Public or the Profession would be benefitted by the change remains to be seen.

In another part of his speech, Lord Brougham adverted to the great grievance of the payment of *County Court* officers by fees levied on the suitors; and expressed his deep regret if the Session should close without the passing of any measure for the amendment of the Law. It was true, said his lordship, that the Bills of Exchange Bill had passed, and he was not without hope that some others would also receive the Royal Assent.

The Lord Chancellor said, it was the firm intention of the Government to press the *Charitable Trusts' Bill*, and he had the strongest possible confidence that it would pass the other House. With regard to the *Leasing and Sales of Settled Estates' Bill*, the Solicitor-General assured him that he had no doubt of its becoming law this Session, notwithstanding that it had been referred to a Select Committee. The fact was that fears had been entertained lest it should lead to the inclosure of Hampstead Heath. That was, of course, absurd, but it was thought desirable to insert a clause to place the matter beyond doubt, by providing that no person who had applied to Parliament and whose application had been rejected should be allowed to take the benefit of the Act:—that is, to have the chance

<sup>1</sup> See page 225, *ante*.



of obtaining from the Court of Chancery what had been refused by the Legislature.<sup>2</sup>

The most prominent subject of legal interest now before the House of Commons is the *Limited Liability Partnership Bill*, which, although supported by all the force of the Government, has met with serious obstruction from various influential parties in the House, as well from leading members of the last administration, as from some of the great commercial capitalists. Some oppose the whole principle of the Bill, and others would so modify its provisions as to deprive it of much of its expected usefulness; whilst another class would expunge those safeguards which are proposed to check or prevent frauds on creditors. We shall be glad to see some progress made in the right direction, by way of instalment, and the improvement may be carried farther after some experience in the operation of the change. Notwithstanding the strong opposition in Parliament, we believe the public in general is in favour of the Bill; and that opinion is forcibly expressed in a leading article in *The Times*, of the 27th July, from which we make the following extracts:—

"To any unprejudiced observer it must appear, at first sight, a very remarkable thing that there should be any opposition at all to such a measure as the *Limited Liability Bill*. Why, in the world, is it so obnoxious, so intolerable, so execrable a thing that a man having, we will say, 500*l.*, should not be permitted to lend it to a neighbour on the simple and innocent condition of sharing his neighbour's profits, in case of success, and losing no more than his 500*l.*, in the case of failure? Where is the extravagance, where is the dishonesty, where the peril, where is the un-English character, where is the inevitable loophole for roguery and folly, in such a proposition? In our humble opinion, it may fairly be assumed that, as a general rule, an Englishman who has scraped together 500*l.*, or even come by it in some less tedious way, will take care of it, if he can, and will not put it into the hands of the first fool, or the first knave, who asks for the use of it. The penalty of losing the money will generally

be quite enough to deter the owner from a very wild investment, if there is the opportunity of a better one. Why is it, then, that the proposed liberty of advancing money on the terms just described should be fiercely disputed, on the ground that the penalty of losing all the money so advanced is not enough, and that the lender must be bound not only to the amount of his advance, but to the whole of his means, every farthing he has in the world, every earthly thing he possesses, and his personal liberty besides? Why this desperate determination to bind a man not only up to the whole of his venture, but to all that he has, body and soul? Shylock had a particular and not very creditable reason for binding his creditor, not only to the whole of his 6,000 ducats, but to the very flesh on his bones. But it is natural to ask with some curiosity who are they, in a Christian community, who insist that the law between debtor and creditor shall always be of this excruciating and murderous character. Who are they who insist that in every instance there shall not only be the forfeiture of the sum expressed in the bond, but of everything else the debtor has in the world? We can only answer a simple question, and we answer it only from the columns before us. The hon. members who make this demand are \* \* \* \* all capitalists.

"It does really seem to us a most invidious proceeding that a dozen wealthy men, with great command of capital, and great opportunities of employing it to advantage, should come down to the House in a body for the purpose of debarring the man with small means from using those small means to the best advantage, except at the risk of everything he has in the world. If it is not a question of capital *versus* labour, these gentlemen are bound to explain why it is that the opposition to the measure in the House is conducted almost exclusively by very large capitalists. We should be, and, indeed, always have been, the very last to encourage any jealousy between capital and labour, or, to speak in plainer language, between the rich and the poor. We shall ever insist, not only on the rights of capital, but on the duty of the Legislature to protect and cherish it from envious and malicious agitation. But we hold it also a matter both of policy and of duty to foster the more humble savings of the poor and increase the opportunities for their use.

<sup>2</sup> It does not appear, however, that any Bill for actually enclosing Hampstead Heath has ever been before Parliament. The apprehension, we believe, was, that if Sir Thomas Wilson had succeeded in his first step in obtaining increased powers for building, the encroachment on the Heath would have followed:—the small end of the wedge, therefore, was resisted.

"The wealthy gentlemen who argued against the Bill admitted that limited liability did for France, for the United States, and, indeed, for all other countries in the

world. But then, it is argued, all these are poor countries; that is, in France, for example, there is a very numerous class of small proprietors, who have not separately enough for large enterprises, while the enterprises themselves are flagging for want of means. But, if England is a rich country, it is also a poor country, for there are poor as well as rich in it. Everybody who has to do with the poor must be painfully aware of two continual demands to be found everywhere,—on the one hand, persons wanting a little money to carry on some small business or to seize some opportunity of extending it; and, on the other hand, persons having a little money, and wanting to put it out to the best advantage. Now, what do these people do with their money at present? They put it in a savings-bank, which gives them 2½ per cent., that is 2*l.* 15*s.*, per annum for every hundred pounds. They invest it in a shop or a publichouse, and are ruined. They put it into a building society, with the same result. They join a freehold land society, and get saddled with a bit of land they don't know what to do with, two miles or ten miles off. If the sum of money is a little larger, they buy shares in a railway, or a mine, being totally ignorant of both, and pay the penalty of ignorance by considerable losses.

"The question before us is how to deal with these two kinds of demand—the demand for a little capital, and the demand for small investments. We maintain that the most obvious, natural, and, on the whole, the safest way, is to encourage people with small sums to advance them to small tradesmen on the chance of 10 per cent., and no danger of losing more than the 100*l.* Small people know one another. They know whom they may trust. They know an honest man, a clever man, and a diligent man. They are safer in dealing with their neighbours than in large, inscrutable, and remote speculations requiring millions of capital. We are aware that, as the Duke of Wellington told his soldiers after the war, 'good interest is only another name for bad security;' but we are also aware that few people will be content with 2*l.* 15*s.* from the savings-bank, or even 3*l.* 6*s.* from the funds at their present price. No good reason can be assigned why they should not be allowed to advance their money to a neighbour whom they know and whom they trust, on the condition of sharing his profits to the extent of the advance, and no further."

Another Bill in which a large part of the

public, and the practitioners in Chancery, are interested, is the "Despatch of Business in Chancery," which has been postponed from week to week for some time past. A clause which was introduced late in the progress of the Bill in the House of Lords, prohibits the Commissioners from taking affidavits in Chancery at any place but their own offices, except in case of sickness. We have often objected to this restriction, but shall once more state it, as the time draws near for its final consideration.

To members of the Legislature and of the Government, official persons, bankers, merchants, and men of business, ladies, aged persons, and others, it is an obvious convenience to be spared the necessity of leaving their homes, although not suffering from sickness, when they may have occasion to take an oath or make a declaration.

Affidavits as to important matters are sometimes required from persons who are under no legal obligation to make them, and who are disinclined to go out of their way for the purpose. In such cases, the power which now exists, *but which this clause will take away*, of bringing a Commissioner to take the deposition, may often be the means of securing important testimony which would otherwise be lost.

As a general rule, Commissioners are not to be found at their places of business after six o'clock in the evening. If this clause should pass, Commissioners cannot take affidavits *even at their own residences*, although within the limits of their jurisdiction, after that hour, however urgent the occasion, or to whatever extent the convenience of deponents—in other words, *the advantage of the public*—may be promoted thereby.

Cases may readily be conceived, indeed they are of not infrequent occurrence, in which all the members of a firm of bankers, merchants, or men of business, perhaps three, four, or five in number, have to join in one affidavit or answer. At present, one Commissioner may attend them at their own place of business, and administer the oath to them all, at one and the same time. If these clauses should pass, all the members of the firm must leave their place of business, at whatever inconvenience, and resort to that of the Commissioner.

And for what object is the proposed change? no evil or inconvenience in the existing system is alleged to justify it. And even if any should hereafter arise, it is in the power of the Lord Chancellor to remedy it by rule or order without the aid

of a Statute; but the proposed enactment would altogether deprive the Lord Chancellor of such corrective and remedial power.

An oath or affirmation can derive no greater sanctity, and can impose no weightier obligation on the conscience of the person taking it, from its being administered in one place of business or residence, rather than another. And if a Commissioner is a fit person to administer an oath in Fleet Street or Cheapside, he cannot be less fit to do so in Cornhill or Lombard Street. In all cases, at present, he must state in the jurat the place where he actually exercises his power, so that it may at once appear whether he is or is not acting within the limits of his jurisdiction.

To the solicitors themselves, who are Commissioners, the proposed enactment is entirely indifferent. If affidavits or declarations are necessary to be made, and they are not allowed to go to deponents, it follows that deponents must come to them. But it is *the public* who are really concerned in the matter, and it is their interest and convenience; and not that of the Solicitors, which will suffer by the change.<sup>3</sup>

There are two other Bills of public importance,—namely, the Metropolitan Local Management and the Metropolitan Building Bills,—which have passed the House of Commons; and as in the remaining ten days of the Session the House of Lords will have time to consider them, it may be presumed that these measures will receive their lordships' sanction in time for the Royal Assent.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages:—

Purchasers' Protection, 18 Vict. c. 15,—p. 5.  
Lunacy Regulation Act, c. 13,—p. 32.  
Commons' Inclosure, c. 14,—p. 32.  
Newspaper Stamp Duties, c. 27,—p. 137.  
Sewers (House Drainage), c. 30,—p. 139.  
House of Commons' Proceedings, c. 33,—p. 139.

Income Tax, c. 20,—p. 197.  
Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.

Administration of Oaths Abroad, 18 & 19 Vict. c. 42, p. 175.

Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.

<sup>3</sup> Extracted from a paper of the Incorporated Law Society.

Common Law Pleadings, c. 26,—p. 176.

Infants' Marriages Settlements, c. 33,—p. 198.

Palatine of Lancaster Trials, c. 45,—p. 241.

Bills of Exchange and Promissory Notes, c. 67, p. 256.

Cinque Ports, c. 48, p. 258.

## BILLS OF EXCHANGE AND PROMISSORY NOTES.

18 & 19 VICT. c. 67.

From October 24, 1855, all actions upon bills of Exchange, &c., may be by writ of summons according to the form in Schedule A. Plaintiff, on filing affidavit of personal service, may at once sign final judgment as in the form in Schedule B.; s. 1.

Defendant showing a defence to a Judge upon the merits to have leave to appear; s. 2.

Judge may, under special circumstances, set aside judgment; s. 3.

Judge may order Bill to be deposited with officer of Court in certain cases; s. 4.

Remedy for the recovery of expenses of noting for nonacceptance or nonpayment of dishonoured bill; s. 5.

Holder of bill of exchange may issue one writ of summons against all or any of the parties to the bill; s. 6.

Common Law Procedure Acts and rules incorporated with this Act; s. 7.

Act to apply to Courts of Common Pleas, Lancaster and Durham; s. 8.

Her Majesty may direct Act to apply to Courts of Record in England and Wales; s. 9.

Act not to extend to Ireland or Scotland; s. 10.

Short title; s. 11.

The following are the Title and Sections of the Act:—

An Act to facilitate the Remedies on Bills of Exchange and Promissory Notes by the Prevention of frivolous or fictitious Defences to Actions thereon. [23rd July, 1855.]

Whereas *bond fide* holders of dishonoured bills of exchange and promissory notes are often unjustly delayed and put to unnecessary expense in recovering the amount thereof by reason of frivolous or fictitious defences to actions thereon, and it is expedient that greater facilities than now exist should be given for the recovery of money due on such bills and notes: Be it enacted, as follows:

1. From and after the 24th day of October, 1855, all actions upon bills of exchange or promissory notes commenced within six months after the same shall have become due and payable may be by writ of summons in the special form contained in Schedule A. to this Act annexed, and indorsed as therein mentioned; and it shall be lawful for the plaintiff,

on filing an affidavit of personal service of such writ within the jurisdiction of the Court, or an order for leave to proceed, as provided by the Common Law Procedure Act, 1852, and a copy of the writ of summons and the indorsements thereon, in case the defendant shall not have obtained leave to appear and have appeared to such writ according to the exigency thereof, at once to sign final judgment in the form contained in Schedule B. to this Act annexed (on which judgment no proceeding in error shall lie) for any sum not exceeding the sum indorsed on the writ, together with interest, at the rate specified (if any), to the date of the judgment, and a sum for costs to be fixed by the Masters of the Superior Courts or any three of them, subject to the approval of the Judges thereof or any eight of them (of whom the Lord Chief Justices and the Lord Chief Baron shall be three), unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the plaintiff may upon such judgment issue execution forthwith.

2. A Judge of any of the said Courts shall, upon application within the period of twelve days from such service, give leave to appear to such writ, and to defend the action, on the defendant paying into Court the sum indorsed on the writ, or upon affidavits satisfactory to the Judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the Judge may seem fit.

3. After judgment, the Court or a Judge may, under special circumstances, set aside the judgment, and, if necessary, stay or set aside execution, and may give leave to appear to the writ, and to defend the action, if it shall appear to be reasonable to the Court or Judge so to do, and on such terms as to the Court or Judge may seem just.

4. In any proceedings under this Act it shall be competent to the Court or a Judge to order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the Court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

5. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for nonacceptance or nonpayment, or otherwise, by reason of such dishonour, as he has under this Act for the recovery of the amount of such bill or note.

6. The holder of any bill of exchange or promissory note may, if he think fit, issue one writ of summons, according to this Act, against all or any number of the parties to such bill or note, and such writ of summons shall be the commencement of an action or actions against the parties therein named respectively, and all subsequent proceedings against such respective parties shall be in like manner, so far as

may be, as if separate writs of summons had been issued.

7. The provisions of the Common Law Procedure Act, 1852, and the Common Law Procedure Act, 1854, and all rules made under or by virtue of either of the said Acts, shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.

8. The provisions of this Act shall apply, as near as may be, to the Court of Common Pleas at Lancaster and the Court of Pleas at Durham, and the Judges of such Courts, being Judges of one of the Superior Courts of Common Law at Westminster, shall have power to frame all rules and process necessary thereto.

9. It shall be lawful for her Majesty from time to time, by an Order in Council, to direct that all or any part of the provisions of this Act shall apply to all or any Court or Courts of Record in England and Wales, and within one month after such order shall have been made and published in the *London Gazette* such provisions shall extend and apply in manner directed by such order, and any such order may be, in like manner, from time to time altered and annulled; and in and by any such order her Majesty may direct by whom any powers or duties incident to the provisions applied under this Act shall and may be exercised with respect to matters in such Court or Courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such Court or Courts the provisions so applied.

10. Nothing in this Act shall extend to Ireland or Scotland.

11. In citing this Act in any instrument, document, or proceeding, it shall be sufficient to use the expression "The Summary Procedure on Bills of Exchange Act, 1855."

#### SCHEDULES REFERRED TO IN THE FOREGOING ACT.

##### (A.)

VICTORIA, by the Grace of God, &c.

To C. D., of \_\_\_\_\_ in the County of \_\_\_\_\_ We warn you, that unless within 12 days after the service of this writ on you, inclusive of the day of such service, you obtain leave from one of the Judges of the Courts at Westminster to appear, and do within that time appear in our Court of \_\_\_\_\_ in an action at the suit of A. B., the said A. B., may proceed to judgment and execution.

Witness, &c.

*Memorandum to be subscribed on the Writ.*

N.B.—This writ is to be served within six calendar months from the date hereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

*Indorsement to be made on the Writ before service thereof.*

This writ was issued by E. F., of \_\_\_\_\_, attorney for the plaintiff. Or, this writ was

issued in person by A. B., who resides at [mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence.]

#### Indorsement.

The plaintiff claims [ pounds principal and interest], or pounds balance of principal and interest due to him as the payee [or indorsee] of a bill of exchange or promissory note, of which the following is a copy:—

[Here copy bill of exchange or promissory note, and all indorsements upon it].

And if the amount thereof be paid to the plaintiff or his attorney within days from the service hereof, further proceedings will be stayed.

#### NOTICE.

Take notice, that if the defendant do not obtain leave from one of the Judges of the Courts within 12 days after having been served with this writ, inclusive of the day of such service, to appear thereto, and do within such time cause an appearance to be entered for him in the Court out of which this writ issues, the plaintiff will be at liberty at any time after the expiration of such 12 days to sign final judgment for any sum not exceeding the sum above claimed, and the sum of pounds for costs, and issue execution for the same.

Leave to appear may be obtained on an application at the Judge's Chambers, Serjeant's Inn, London, supported by affidavit showing that there is a defence to the action on the merits, or that it is reasonable that the defendant should be allowed to appear in the action.

*Indorsement to be made on the Writ after service thereof.*

This writ was served by X. Y. on L. M. (the defendant the defendants), on Monday the day of 18 ,

By X. Y.

(B.)

In the Queen's Bench.

On the day of in the year of our Lord, 18 [Day of signing judgment].

ENGLAND (to wit). A. B. in his own person [or by his attorney] sued out a writ against C. D., indorsed as follows:—

[Here copy Indorsement of Plaintiff's Claim.]

and the said C. D. has not appeared:

Therefore it is considered that the said A. B. recover against the said C. D. pounds, together with pounds for costs of suit.

#### CINQUE PORTS.

18 & 19 VICT. c. 48.

Jurisdiction of Lord Warden in civil proceedings abolished; s. 1.

Writs and judgments to be directed and

executed in the Cinque Ports as in other places; s. 2.

On petition of inhabitants of parishes within the Thanet division, her Majesty may order such parishes to be part of said county, and county justices to have jurisdiction; s. 3.

Justices of Kent empowered to levy county rates in the parishes and places which may be severed from Dover; s. 4.

51 Geo. 3, c. 36; 5 & 6 Wm. 4, c. 135, and section 11, and part of section 10 of 6 & 7 Wm. 4, c. 105, repealed as to places severed from Dover; s. 5.

Places severed from Dover to continue liable to existing debt; s. 6.

Saving as to persons committed or held to bail in places separate from Dover; s. 7. Compensations; s. 8.

Prisoners in gaol of Dover Castle to be removed to county gaol; s. 9.

Saving rights of Lord Warden, &c.; s. 10.

The following are the Title and Sections of the Act:—

An Act for the better Administration of Justice in the Cinque Ports. [16th July, 1855.]

Whereas it would conduce to the better administration of justice in the Cinque Ports if the jurisdiction and authority of the Lord Warden of the Cinque Ports and constable of Dover Castle in relation to civil suits and proceedings were abolished: and it is expedient that the parishes or places of Saint John the Baptist (called Margate), Saint Peter the Apostle, Birchington, Acot otherwise the Ville of Wood, Beakesbourne, and Grange otherwise Greenwich which are members or liberties of Dover, or some other of the said Cinque Ports, should be severed therefrom: Be it therefore enacted as follows:—

1. From and after the 30th day of September, 1855, all jurisdiction and authority of the Lord Warden of the Cinque Ports and constable of Dover Castle in or in relation to the administration of justice in actions, suits, or other civil proceedings at law or in equity, or the execution of judgments, writs, and process therein or connected therewith, shall cease and determine: Provided always, that the said Lord Warden and constable shall have and retain jurisdiction, power, and authority to execute all writs of *feri facias* directed to and received by him on or before the said 30th day of September, 1855, as fully, to all intents and purposes, as if this Act had not passed.

2. From and after the 30th day of September, 1855, her Majesty's writs in or in relation to all actions, suits, and civil proceedings shall be directed and obeyed, and the jurisdiction of her Majesty's Courts of Law and Equity, and of the Judges thereof, and the judgments and

process thereof in relation to such actions, suits, and proceedings, shall extend and be exercised and executed in respect of, over, and within the Cinque Ports, the two ancient towns of Winchelsea and Rye, and their several members and liberties, in like manner and to the same extent to and for all intents and purposes as such writs, jurisdiction, judgments, and process respectively are now directed, obeyed, exercised, and executed in respect of, over, and within other places in England; and the sheriff and other ministers of counties shall, in the execution of such judgments, writs, and process, and for all other purposes of civil justice, have such and the like powers and authorities within the Cinque Ports, the said two ancient towns, and their several members and liberties, as they respectively have in other parts of their counties.

3. If the persons rated to the relief of the poor within the district or division called the Thanet division of Dover, which comprises the parishes or places of Saint John the Baptist (called Margate), Saint Peter the Apostle, Birchington, Acol otherwise the Ville of Wood, or within the parishes of Beakesbourne and Grange otherwise Grench, or the persons so rated within any one or more of such parishes or places, shall petition her Majesty, stating that the justices of the county of Kent, at their annual general session, or at any adjournment thereof, have resolved that the parishes or places aforesaid or any one or more of them may be permitted to belong to the county of Kent, on payment by the said parishes or places to the county of a sum of money to be named in such resolution, in respect of the expenditure made by the said justices in gaols, houses of correction, Courts of Justice, lunatic asylums, and other buildings, and praying that the parishes or places aforesaid or any one or more of them may be deemed to be part of the said county, it shall be lawful for her Majesty, if she shall think fit, by the advice of her Privy Council, to order that the said parishes or places or such one or more of them as shall so petition shall, from a date to be fixed in such order, be deemed to be part of the said county, and from and after that period the justices for the time being assigned to keep the peace in and for such county shall exercise the jurisdiction of justices of the peace in and for the parishes or places named in such order as fully as by law they and each of them can or ought to do in and for other places in such county.

4. It shall be lawful for the justices of the said county of Kent at their annual general session, or at any adjournment thereof to be holden after such order, to levy and raise upon and from the rateable property of the inhabitants of the parishes or places comprised in the said order the sum or sums of money mentioned in such resolution, by such annual or other instalments as may in such resolution have been stipulated and agreed by fair and equal rates in the nature of county rates to be paid to the treasurer of the said county, and applied in aid of the county rate, and the said

justices of the said county shall have the same powers and remedies for making, levying, and recovering the said rates as they now or for the time being may by law have for making, levying, and recovering the county rates from parishes lying partly within the jurisdiction of all the justices of the said county, subject to all rights and remedies of appeal and otherwise to which county rates are or may be liable.

5. From and after the day fixed in such order, or from and after the granting of a charter of incorporation to the said parishes or places or any one of them, or any part or parts thereof, the Act of 51 Geo. 3, c. 36, and section 135 of the Act of the session holden in the 5 & 6 Wm. 4, c. 76, and section 11 of the Act of the session holden in the 6 & 7 Wm. 4, c. 105, and so much of section 10 of the same Act as enacts that the noncorporate members and liberties of the towns and ports of Hastings, Sandwich, Dover, and Hythe, and ancient town of Rye, shall and may be chargeable and charged by the Courts of general or quarter sessions of the peace holden for the same respectively with a due proportion of the expenses of such towns and ports and ancient town respectively, and the noncorporate members and liberties thereof, to the payment of which expenses rates in the nature of county rates are applicable, and that the same shall and may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the said Act of the 5 & 6 of Wm. 4, and that a due proportion of inhabitant householders to serve as grand jurors and jurors at the Courts of general or quarter sessions of the peace of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and of the said ancient town of Rye, shall be summoned by the clerks of the peace of the said towns and ports and ancient town from the noncorporate members and liberties thereof respectively, and that the attendance of such jurors shall be enforced and their defaults punished in the manner by the said last-mentioned Act directed with respect to jurors in boroughs, shall be repealed so far as the same concern or affect the parishes or places named in such order, or in case of a charter of incorporation the part thereof comprised in such charter, and from and after the day fixed in such order, or from and after the date of such charter of incorporation, no Court of Sessions to be holden for the town and port of Dover, nor any justices thereof, shall have any jurisdiction or authority over or in respect of the parishes or places comprised in the said order, or the district comprised in any such charter, as the case may be, and no such parish, place, or district shall be liable to any rate, cess, or impost to which the same or the inhabitants thereof would but for this Act be liable as such member or liberty, save as hereinafter otherwise provided: provided always, that all persons who have exercised the office of mayor, aldermen, or guardians of the poor in the said Cinque Ports, or any of them, shall be eligible

for re-election, and if elected shall have all the powers they previously possessed.

6. And whereas the said parishes or places are now liable to contribute towards the payment of moneys which have been borrowed on the security of the rates raised within the said town and port and the limbs and precincts of the same, under the description of rates in the nature of county rates, and the interest of such moneys: and whereas parts of the moneys so borrowed have been from time to time paid off, and the council of the said town and port have from time to time determined what portion of such moneys shall be paid off in each year, and reported to the Recorder of Dover the rateable proportion of such sum and interest to be assessed and levied upon each of the said places, and the same has been assessed and levied accordingly: the said parishes of Saint John the Baptist (called Margate), Saint Peter the Apostle and Birchington, and Acol otherwise the Ville of Wood, shall, notwithstanding any such order or charter, continue liable to contribute towards the satisfaction or payment of the debt now charged upon the said rates; and it shall be lawful for the council of Dover, and they are hereby required, to declare and determine from time to time what portion of such debt shall be paid off during any one year, and to report to the Recorder of Dover the sum required to be raised in such year for paying off such portion of the said debt, and the interest due in such year in respect of such debt; and the said Recorder from time to time, at the quarter sessions of the peace for the said borough of Dover which shall be held next after any such report of the said council shall have been made to him as aforesaid, shall ascertain the proportionate part of such sum which will be required to be paid by each of the places severed from Dover by such order or charter as aforesaid, such proportionate part to be ascertained and regulated by the respective rateable values of all the places jointly liable to the said debt, and shall make a rate in the nature of a county rate upon each of the said places, severed as aforesaid, sufficient to raise such proportionate part as aforesaid, with the costs and expenses of collecting, levying, and enforcing payment thereof; and it shall be lawful for the overseers or other persons charged with the collection of rates made for the relief of the poor in each such place, and they are hereby required to pay to the treasurer of Dover the amount to which the same shall be so rated, by and out of the moneys from time to time raised upon such place by any rate or rates made for the relief of the poor of such place; and on nonpayment thereof to the said treasurer within 30 days after delivery to such overseers or other persons as aforesaid of a copy of the rate so to be made by the said recorder as aforesaid, the same shall be recoverable, by the warrant of any two justices of the peace for the said county of Kent, by distress and sale of the offender's goods, in like manner in every re-

spect as any rate in the nature of a county rate may be recovered and enforced by virtue of any law now in force.

7. This Act shall not extend to deprive the Court of general or quarter sessions of Dover of jurisdiction in the case of any person who before such order or charter as aforesaid may have been committed or holden to bail for trial at such Court of general or quarter sessions from any place severed from Dover by this Act, but all proceedings upon and in relation to such trial, or preliminary thereto or consequent thereupon, or otherwise consequent upon such committal or holding to bail, shall be continued or had in like manner in all respects as if such order or charter had not been made or obtained; and all expenses incurred by the town and port of Dover in any such case (the amount of such expenses to be ascertained and determined from time to time by the recorder of Dover) shall be added to the amount to be raised under the provision hereinbefore contained by rates to be levied upon the places from which the person may have been committed or holden to bail.

8. It shall be lawful for the Commissioners of her Majesty's treasury to award to any persons who may sustain by reason of the passing of this act, or of any such order or charter, any loss of fees, emoluments, or advantages accruing from offices holden by them such compensation as, having regard to the tenure and nature of such respective offices, such Commissioners deem just and proper; and all compensation so to be awarded, except such as may be awarded in respect of any such loss occasioned by the severance from Dover of the places severed from that town and port by such order or charter, shall be paid out of such moneys as shall be provided by Parliament for this purpose; and all compensation so to be awarded in respect of any loss occasioned by such order or charter shall be certified by the said Commissioners of the Treasury to the recorder of Dover, and shall be levied rateably upon the places to which such order or charter shall relate by means of an addition to the rates to be made on the said places for the payment of the said debt; and in case any such compensation as last aforesaid shall continue payable after such debt is paid off, rates shall nevertheless continue to be made and levied in like manner for the payment of such compensation until the same is fully paid, and such compensation shall be paid thereout by the treasurer of Dover to the persons entitled thereto.

9. Every person who on the said 30th of September, 1855, may be in the custody of the said Lord Warden, under or by virtue of any jurisdiction or authority hereby abolished, shall, as soon as conveniently may be thereafter, without writ of *habeas corpus* or other writ for that purpose be removed by the gaoler or keeper of the gaol in Dover Castle to the common gaol of the county in which he may have been arrested under the writ or other process for his arrest and imprisonment, and

shall be by such gaoler or keeper delivered into the custody of the gaoler or keeper of such common gaol, together with the writ or other process by virtue of which such person was arrested and imprisoned, and all writs or other process lodged with such first-mentioned gaoler or keeper by virtue of which such person is or might be detained in the custody of the said Lord Warden; and the gaoler or keeper of the said common gaol shall give a receipt in writing for every person so removed to such common gaol; and the reasonable expenses of such removal shall be paid by the Commissioners of her Majesty's Treasury; and all persons who may be in the lawful custody of the said Lord Warden on the said 30th September, 1855, shall, until removed as aforesaid, and for and during the time of such removal, notwithstanding anything hereinbefore contained, be to all intents and purposes deemed and considered to be in the proper legal custody, unless and until they respectively be sooner discharged in due course of law; and all persons so removed shall, after being delivered into the custody of the gaoler or keeper of the common gaol of such county as aforesaid, be deemed to be in the legal custody of the sheriff and of such gaoler or keeper, in like manner as if all such writs and process as aforesaid had been originally directed to and to be executed by such sheriff.

10. Nothing in this Act shall affect any jurisdiction, power, or authority of the said Lord Warden, or of any of the officers of the Cinque Ports or other persons, under any Act relating to the adjustment of salvage, or any jurisdiction, power, or authority of the Court of Admiralty of the Cinque Ports, or of any of the officers of such Court, or the rights of the said Lord Warden to or in respect of Flotsam, Jetsam, and Lagan.

## CONSOLIDATION OF THE STATUTE LAW.

### REPORT OF THE COMMISSIONERS.

*To the Queen's Most Excellent Majesty in her High Court of Chancery.*

WE, your Majesty's Commissioners, appointed by your Majesty's Commission and Supplemental Commission, dated respectively the 23rd day of August and the 15th day of December, in the 18th year of your Majesty's reign, whose hands and seals are hereto set, do hereby humbly report to your Majesty, that in obedience to your Majesty's Commission we met for the first time on the 13th day of November, 1854, and have since met from time to time, and have both deliberated respecting the best mode of effecting the objects indicated to us by your Majesty's said Commission, and have proceeded to a certain extent in effecting the same.

The objects so indicated to us were "the consolidating the Statute Laws of the realm, or such parts thereof as we might find capable of

being usefully and conveniently consolidated; combining with that process, if we should think it advisable, the incorporation of any parts of the Common or unwritten Law, in such manner as should seem to us desirable; and also the devising and suggesting such rules (if any) as might in our judgment tend to ensure simplicity or uniformity, or any other improvement, in the form and style of future Statutes. And for the aforesaid purposes, or any of them, we were authorised and empowered by your Majesty from time to time to employ such learned and skilful persons as we might think proper."

A sum of money having been placed at our disposal by Parliament, the first question which it became necessary for us to consider was, what assistance we should obtain in the preparation of the consolidated Bills which we might think it expedient to undertake; with reference to which question we had to consider whether it would be more advisable to propose the appointment of permanent Sub-Commissioners at a fixed salary, or to employ different persons from time to time, to be remunerated by fees as for ordinary professional drafts. On the whole, it appeared to us most convenient to adopt the latter course, at least for the present, for the following reasons:—1. Because we considered that accident and inclination often make different individuals specially apt to deal with particular subjects, and that this plan would probably enable us to obtain in each case the services of the men most familiar with the Statutes to be consolidated. 2. We considered that it would probably enable us to obtain the services of persons of higher standing than those who would accept the post of Sub-Commissioners. 3. We thought that it would relieve us from difficulty, and from the risk of doing injustice, with respect to the question of requiring the Sub-Commissioners to relinquish their profession. And even if it should be proposed ultimately to employ permanent Sub-Commissioners, we consider that this plan would enable us to become acquainted with the persons best fitted for our purpose. Sufficient uniformity of method in the work of the different persons employed might, we thought, be attained by the general supervision which we should exercise.

We have accordingly obtained the assistance, on the footing above explained, of the several gentlemen whose names will be presently mentioned.

We propose, first, to state what works we have hitherto caused to be prepared, in accordance with the directions contained in your Majesty's Commission. They are as follows:

1. A Consolidation of the Statutes relating to the National Debt, by Mr. T. Chisholm Anstey. This Bill was originally prepared by Mr. Anstey as a member of the Statute Law Board employed by the Lord Chancellor in 1853-54, but has been revised and completed by him for our use, and is now under consideration.
2. A Consolidation of the Statutes relating



to Masters and Servants or Workmen, by Mr. J. Warrington Rogers (now her Majesty's Solicitor-General for Van Diemen's Land). This bill also was originally prepared by Mr. Rogers as a member of the former Board, but has been revised and completed by him for our use, and is now under consideration.

3. A Consolidation of the Statute Criminal Law, by Mr. J. J. Lonsdale, founded on the Reports of your Majesty's late Commissioners of Criminal Law. Of this work, the first Bill, comprising the subject of treason and other offences against the State, has been submitted to us, and the residue is in course of preparation.
4. A Consolidation of the Stamp Laws, by Mr. Henry Jessel. The scheme for this Bill has been settled and improved, and the Bill is in course of preparation.
5. A Consolidation of the Statutes relating to Bills of Exchange and Promissory Notes, by Mr. J. W. Rogers. This has been delivered to us, and is now under consideration.
6. A Consolidation of the Statutes relating to Prisons by Mr. Anstey. This has been delivered to us, and is now under consideration.
7. A Consolidation of the Statutes relating to Landlord and Tenant generally, by Mr. A. Bisset. The scheme for this has been delivered, and is now under consideration.
8. A Consolidation of the Statutes relating to Ecclesiastical and Collegiate Leases, by Mr. George Wingrove Cooke. The scheme for this has been delivered, and is now under consideration.
9. We have also superintended, at the request of the Copyhold Commissioners, a Bill for consolidating and amending their various Acts, prepared for them by Mr. G. Wingrove Cooke.

For the purpose of ensuring to a certain extent uniformity of style in the Bills prepared under our direction, we have caused some instructions for draftsmen to be drawn up, a copy of which is subjoined to this Report in the Appendix.

We also subjoin in the Appendix the minutes of our various meetings, and a few papers relating to some subjects which have been discussed by us, or which we have caused to be prepared for our use.

While causing the above-mentioned Bills to be prepared, we were not unaware of the existence of several difficult questions relating to the process of consolidation which it may be thought that we ought to have solved before any such works were commenced. It may be admitted that, in consequence of those questions not having been first solved the Bills produced must be in some respects imperfect; but, taking a practical view of the matter, we felt that if the task were not to be commenced until a comprehensive plan had been matured in all its details, there was a considerable risk that it would never be commenced at all; and we

considered that by producing some Bills, certainly useful in themselves, and an improvement upon the existing state of the law, without making their acceptance dependent upon the acceptance in all its details of any large scheme of change, we might gradually make the subject familiar and popular, and thus prepare the way for future measures on a more comprehensive scale. We thought that these considerations justified us in producing these Bills, even at the risk of finding hereafter that they must themselves be remodelled; for it is not necessarily an objection to a proposed improvement to say that when completed it will only be made the foundation of a further improvement; if the intermediate step is of itself a useful one, and the more perfect work cannot be hoped for until after a long interval, we conceive that we are complying with the terms of our Commission, by producing these Bills for present use.

Having thus stated our reasons for the course which we have pursued, we proceed to mention shortly the several difficulties which have presented themselves to us in the course of our attempts to perform the task committed to us by your Majesty;—difficulties which (as we have already admitted) ought, on an abstract view of the subject, to have been solved before any part of the work was commenced.

The first great difficulty lies in the arrangement of the materials which it is our office to remodel. An entire body of law may be made the subject of a scientific analysis and arrangement;—though even in that case there can be no absolute correctness; and objections, it is believed, have been made to most of the divisions of their subject adopted by jurists; but this question of arrangement, which is so difficult even with regard to an entire body of law, becomes still more difficult when we have only to deal with the Statute Law; that is, with a collection of alterations of and additions to the general body of the unwritten Law, which are not only entirely without order at present, but may possibly in some cases never admit, if taken alone, of being reduced to any order, at least not without the incorporation of some of the unwritten Law; for a mere series of exceptions without the rules can hardly stand alone.

It is true that a general plan of the whole law may be first laid out, and the Statute Law then distributed into its proper places in that plan. But this, if strictly carried into effect, would lead, as we conceive, to a result very different from what is generally contemplated by the consolidation of the Statute Law; for we presume that the entire dislocation, section by section, of the whole contents of the Statute Book, and their redistribution on an entirely new plan, is something more than was intended by the Commission with which we have been honoured by your Majesty; and yet it is probable that a division of the Statute Law according to the analytical arrangements proposed by jurists would make such a process necessary: if, for instance, the first great di-

visions were into "Rights" and "Remedies," "Wrongs" and "Punishments," nearly every Statute on the Parliament Roll would have to be taken to pieces.

It is obvious, that, besides other objections to attempting this operation, it would be necessary to pass the whole of any re-arrangement of the contents of the Statutes framed on this principle simultaneously; a consideration which must alone be sufficient to deter any one from undertaking such a task at present. Again, owing to the varying proportions in which the law on any given subject, consists of statutory and non-statutory law, it may very well happen that the most scientific classification of the whole law would not be that best suited to an arrangement which was only to include the Statute Law.

We do not, however, mean to imply that much may not be done in the way of introducing order and a more systematic arrangement where there is now an entire absence of both; but, while doing so, it appears to us that we shall be best serving the convenience of those who have to deal with the law by disregarding to a certain extent the principles of scientific classification, in favour of another consideration,—that of the convenience of keeping together in one new Statute the contents of existing groups of Statutes. Still, even with this limitation, great difficulties of detail present themselves in many cases, which can at best only be solved in an imperfect manner. It has been thought that considerable assistance towards the solution of difficulties of this kind would be furnished by having a complete analytical arrangement, according to subjects, of all the Statute Law now in force; and such a work is now in course of preparation for our use by Mr. T. Chisholm Anstey, under the immediate superintendence of the Attorney-General.

Another important preliminary question is, What is the exact meaning of the term "consolidation"? In a simple case the meaning of the term, and the mode of executing the process, are obvious enough; but many difficulties present themselves in the course of an attempt to carry the process into effect on any important scale.

The most serious of the questions which arise with reference to this, is whether any and what amount of simplification and amendment of the law can properly be introduced by us in the bills which we prepare for presentation to Parliament, and whether we are authorised to attempt the rewriting, with the correction of admitted imperfections, of those Acts which do not require consolidation, strictly so called. It is contended, on the one hand, that the business of the Commission is different from that of a responsible Minister who prepares a consolidating Bill. That is always professedly a Bill to consolidate and amend the law, and it is presented to Parliament for the purpose, primarily, in most instances, of removing defects which have been discovered, as well as for the purpose of making the law more ac-

cessible. The duty of the Commission, on the contrary, is, it is said, to present the law as it finds it, only in a more accessible form; and if Parliament is satisfied that it confines itself to this province, the Bills which are prepared under its superintendence will (or should) be accepted and passed by Parliament without discussion on the propriety of the law itself; whereas if the Bills contain alterations of the existing law, Parliament cannot, without abdication of its functions and its duties, treat them otherwise than as substantive new Bills.

On the other hand, it may be urged, that, however easy it may appear to lay down as a rule that no amendments of the law are to be introduced in the consolidated Acts, yet such a rule, if strictly enforced, would deprive the process of consolidation of a great part of its value. One of the great practical inconveniences of our Statute Law (arising from its having been framed by different hands at different times, without any single superintending authority), is, that it contains a vast number of variations to which it cannot be supposed that any serious importance is or ever was attached, and which might easily and advantageously be reduced to a single rule. And thus, it is said, the denial to a draftsman of liberty to use his judgment and discretion, within moderate limits, will compel him to work under the discouraging conviction that he is required to take great pains to produce a result which, if he possesses the intelligence without which he could not properly execute his task at all, he must feel to be very unsatisfactory, and comparatively useless, and which, moreover, he must feel that he could with ease make much better. Although, it is said, the question of the extent to which the framers of consolidated Statutes may safely be authorised to alter the substance of the existing Statutes presents some difficulty if we attempt to treat it abstractedly, and to lay down general rules for observance, the difficulty of solving it in actual practice in the course of working out any given consolidated Act will not be great to a person of discretion and judgment; and with regard to the objection, that it will be found impracticable to pass consolidated Bills unless they can be accompanied with an assurance that they contain no alteration of the law, it is contended that it might be objected with more propriety to pure consolidations, that it is a waste of the time and powers of the Legislature to put the whole machinery of legislation in motion for the purpose of deliberately giving a new parliamentary sanction to laws which are admitted to be in an imperfect or unsatisfactory state, without taking the opportunity of introducing unobjectionable amendments.

The responsibility for alterations of the law introduced under such circumstances would of course rest with the Minister by whom the Bill is brought into Parliament. A case of this kind has already occurred with reference to the Bill for consolidating and amending the Copyhold Commissioners' Acts, which (as we

have already mentioned) has been prepared by Mr. Wingrove Cooke, for the Copyhold Commissioners, and by them referred to us for approval. We have approved of it, so far as it is a consolidation of the existing law, without expressing any opinion as to the propriety of the amendments introduced.

Another difficult question connected with the process of consolidation is, how far the exact words of the existing Statutes are to be preserved. No one can doubt that mere useless repetitions are to be retrenched; but to effect the complete union, in concise and uniform language, of the enactments of different periods, much more than that is necessary; the whole matter must be completely recast. It has been objected to such a proceeding, that it will disturb all the existing judicial decisions on the former Statutes, and that therefore the exact words of the old Acts should be reproduced,—at least in those cases where they have been the subject of any judicial interpretation. On the other hand, however, it must be remembered, that as soon as there has been a judicial decision on a Statute, the law on the subject consists of the Statute as expounded by the decision; and to reproduce the Statute alone and unaltered may lead to what is not a true representation of the existing law. In this point of view it would seem that many of those enactments which have been made the subject of decisions may require to be altered in their language so as to incorporate the effect of such decisions. The difficulty felt seems to be, that if this is done all the cases in which the law has been previously settled by litigation will have to be settled again by the same process. This, however, by no means follows; for if the new enactment be properly drawn, the cases will be provided for by it without litigation. No doubt a certain amount of inconvenience and trouble must follow on every change in the Statute Law; but they must be submitted to if the benefits will more than counterbalance them. Besides, as the Act will be a new one, passed under new circumstances, it would not follow, even if the exact words of the old Acts were retained, that they would in all cases bear the meanings attached to them by past decisions; at any rate it would not be so certain that the obligation of examining and testing the new Statute could be dispensed with.

The foregoing considerations seem to lead to the conclusion, that it is not expedient at present to deal at all with those old Statutes, such as the Statute of Uses or the Statute of Frauds, which, taken in connexion with the great amount of judicial exposition of which they have become the nucleus, can hardly now be termed Statute Law at all. Statutes of this class might indeed be put in their proper places, unaltered, in an analytical arrangement of the whole contents of the Statute Book, with some explanation to the effect that they are put there only in a declaratory way, and that their effect is to remain the same as if they had been left untouched. It appears to us, how-

ever, that such a course would not be attended with any practical utility; and so far from contributing to the completeness of any arrangement of the contents of the Statute Book, it would render necessary explanations or exceptions of a nature at once awkward and elaborate, and would also prevent the possibility of introducing any uniformity of style in the modern consolidated Statutes.

The chief object, as we conceive, of our labour, is, in the numerous cases where there are many Acts applicable to one subject, often inconsistent, often ambiguous, or an incomplete expression of the intention of the Legislature, and generally verbose, to reduce, as far as possible, each subject to one simple Statute, so that a clear statement of the Statute Law may be found in one Act, which amongst other advantages, would be a great assistance to future legislation.

With respect to the improvement of current legislation, little beyond the preparation of the few general rules for draftsmen already mentioned has been hitherto attempted; but it has been explained by the Lord Chancellor, that it was part of his plan, in recommending the issuing of the Commission, that Mr. Bellenden Ker, in addition to his duties as a member of the Board, should assist the Great Seal in the House of Lords in drawing such Law Bills as should be required by the Lord Chancellor, and by generally examining and reporting to him as to all the Law Bills introduced in either House of Parliament; this duty has been performed by Mr. Ker during the present Session, and he has prepared or assisted in the preparation of several Bills under the Lord Chancellor's direction, and has also reported to the Lord Chancellor on a great number of the Bills which have been brought into Parliament.

Perhaps nothing satisfactory towards the improvement of future legislation can be effected until either a Board or some other persons are appointed whose duty it shall be either to prepare or revise and report upon all Bills before they are brought into Parliament, and to watch them during their progress through the two Houses, either as officers of the Lord Chancellor or some other minister, or as officers of the two Houses of Parliament.

CRANWORTH, C.	(L.S.)
LYNDHURST.	(L.S.)
BROUGHAM.	(L.S.)
WROTTERLEY.	(L.S.)
CAMPBELL.	(L.S.)
JOHN JERVIS.	(L.S.)
FRED. POLLOCK.	(L.S.)
J. PARKE.	(L.S.)
J. MONCREIFF.	(L.S.)
S. H. WALPOLE.	(L.S.)
WILLIAM PAGE WOOD.	(L.S.)
WILLIAM KEOGH.	(L.S.)
JAMES CRAUFURD.	(L.S.)
WALTER COULSON.	(L.S.)
H. BELLENDEN KER.	(L.S.)

July 10, 1855.

## OPINIONS OF THE JUDGES.

DELIVERED IN THE HOUSE OF LORDS  
9TH JULY 1855.*Larpent, Bart., v. Bibby.*

THE questions were,—First. Whether the deed set out in the plea, if it had been dated and executed by six-sevenths in number and value of the creditors after the Act 12 & 13 Vict. came into operation, would have been void as a deed of arrangement within the meaning of the 224th section of that Statute, by reason of its not providing for the distribution of the whole estate of the debtors?

Second.—Whether it was such a deed of arrangement between the trader and his creditors as was contemplated by that section?

Third.—Whether the plea affords a good defence to the action?

My lords, with regard to the first of these questions her Majesty's Judges, after some consultation, are not prepared at this moment to say that they are all agreed. There is some difference of opinion amongst them, though it is not at all unlikely that on further consideration they may all be of the same opinion. But at present we propose, with your lordship's sanction, not to answer that question; because, upon the second and third questions, we are all agreed in considering that this deed is not within the meaning of the Statute, and that the plea affords no defence to the action.

The second and third questions may be considered most conveniently together. We are of opinion that the deed in question, if not void on the ground that all the debtor's property was not included in it, still did not constitute a good defence to the action.

In the first place, the deed was not a deed of arrangement made *before* the Act of the 11 & 12 Vict. c. 106, within the meaning of the 224th section. That section certainly cannot apply to deeds completed in all respects under which the property of the debtor had been conveyed and disposed of before the 11th of October, 1849. It applies only, as stated in *Wagh v. Middleton*, Eighth Exchequer Reports, 352, to inchoate deeds; and possibly the true construction is that it applies to "arrangements," not deeds, *now* entered into between the trader and his creditors, and to deeds and memoranda *afterwards* signed. But at all events the clause does not apply to a deed, which has so far been acted upon, that a creditor, after the Act came into operation, could not be put on an equal footing with those who had signed, if he chose to come in under the deed. And upon the plea in this case, it does not appear that the plaintiff below, the present defendant in error, could now be placed on that footing. For a dividend may have been paid to all the subscribing creditors in March, 1848, when the first dividend was payable, and the plaintiff now not to be entitled to receive it; and he may have been defeated by the provision in the deed, which excludes those creditors from a reserved divi-

dend, who have had reasonable time to assent to the arrangement, and have neglected so to do. Nay, the whole of the debtor's estate may have been distributed consistently with the plea. And to hold that the deed must operate as a release in that case, would be most unjust.

We have some doubt whether the deed is not void, as making the estate distributable amongst, not *all* the creditors, but those only who execute the deed. We should have clearly thought so, except that such a deed is in practice common, and in all cases of a conveyance for the benefit of creditors it is for the distribution of the estate amongst the creditors, parties to the deed. But if we cannot take notice of that, as probably we ought not to do, the deed is void on this account also.

It is unnecessary to say whether the notice of the deed simply, or notice of its having been executed by six-sevenths of the creditors, is requisite, or to decide upon the other objections to the plea, which are however probably unfounded.

*Jack v. Holmes.*

The question was, whether on the record as set out in the printed Appendix the plaintiff was entitled to judgment for an award of *seignior de novo*.

Mr. Baron Parker.—To the question proposed by your lordships we answer that in our opinion on the record as set out in the printed Appendix the plaintiff was entitled to judgment for an award of a *seignior de novo*.

The question altogether depends upon the validity of the lease of the date of the 15th February, 1842, made by the lessors of the plaintiffs, the corporation of Drogheda, to the defendant.

The ejectment was brought in May, 1846. The demise was laid on 22nd October, 1846.

It appears by the evidence on the record that an indenture of lease was made by the corporation on 7th November, 1785, to William Holmes for 61 years from Michaelmas, 1785, at 62*l.* 9*s.* 2*d.* per annum. The defendant purchased this lease in June, 1821. This lease expired at Michaelmas, 1846, and consequently the corporation were entitled to recover, unless the defendant had some other title than under that lease. He claimed by virtue of a lease granted to him of the date of 15th February, 1842, for 99 years; and if it was valid the defendant had a good defence; if it was not, the corporation is entitled to recover.

The question turns entirely on the meaning of a clause in the Statute of the 3 & 4 Vict. c. 109, s. 12. The Statute 3 & 4 Vict. c. 108, for the Regulation of Municipal Corporations in Ireland, repealed and annulled the Charter of Drogheda (being in Schedule A.) from the time that Act came into operation. On the same day the 3 & 4 Vict. c. 109, received the royal assent. The Act 3 & 4 Vict. c. 108, came into operation on the 25th October, 1842.

The 12th section of this Act, c. 109, pro-

vides that the 6 & 7 Wm. 4, c. 100, which restrained the alienation of corporate property in certain boroughs in Ireland (of which Drogheda was one) for a limited time, and which had been continued by other Acts to the 1st September, 1840, should be further continued till the day of the first election of councillors in boroughs in Schedule A. (and Drogheda was one of those, and that election was on the 25th October, 1842), and that no conveyance shall be made or executed before that day, unless in pursuance of some covenant, contract, or agreement *bond fide* made or entered into, on or before the 16th February, 1836, by or on behalf of such body corporate, or of some resolution duly entered in the corporate books of such body corporate, before the said 16th February.

There being no covenant, contract, or agreement in this case, the simple question is, whether there was any resolution, within the true meaning of this clause, duly entered in the corporate books, before the 16th February, 1836.

The only resolution on which any reliance could be placed, was that of the 20th April, 1801, which appeared in the books; it was to this effect: "Resolved unanimously, that it be an instruction from this assembly to the auditors and viewers, in reporting upon petitions for renewals of houses, land, or other premises, that they shall first take into consideration and value the said premises, at the full value between man and man, and that the petitioner so applying, shall then be entitled to a renewal of his lease for 99 years, at one-fourth of the full annual value as a rent, and on paying or fining down another or second fourth, at 17 years purchase for lands, and 10 years purchase for houses; always obliging the petitioner for a renewal of a lease of a house or houses by a special covenant, and any other necessary legal deed, to build or rebuild within five years after the expiration of the term of years in his old lease, under a forfeiture of his new lease or payment of treble rent, as the corporation may think fit; giving it also as a matter of instruction to the auditors and viewers that they specially report on oath, in each particular case, what sum or compensation the petitioner appears to them to be justly entitled to (if any) for the term he proposes to surrender, on obtaining a renewal, and that all reports shall hereafter be received at one assembly, and taken into consideration not "sooner than the then following quarter assembly."

There was another resolution of the 12th January, 1828, that no lease was to be renewed until the premises were within five years of expiration.

There was another of the 8th October, 1841, stating a memorial of John Holmes, the assignee of the lease of 7th November, 1785, petitioning for a renewal, only five years of the original lease having to run, and it was referred to auditors, for their consideration and report.

There was another entry of the 7th January, 1842, apparently of auditors and viewers noticing the petition, and recommending a new survey of the lands, and on the same date a resolution was come to that the report of the auditors and viewers, on the memorial of Alderman Joseph Holmes, the defendant, for renewal of the old lease of November, 1785, be confirmed, and it was unanimously agreed to, and accordingly on the 12th February, 1842, the lease now in question was granted to the defendant, Alderman Holmes, and he paid the fine.

The Lord Chief Justice directed the jury, that having regard to the several resolutions, the defendant's memorial, and the proceedings thereon given in evidence, the lease of 1842 was made in pursuance of a resolution or resolutions duly entered in the books of the corporation of Drogheda before the 16th February, 1836, and that the lease was therefore valid in law, and the defendant entitled to a verdict.

The counsel for the plaintiff excepted to this direction, and the jury found a verdict for the defendant.

The question your lordships propose is, as to the validity of this exception. Our opinion is that it is well founded, and that a *verdict de novo* ought to be awarded. We all think that in this case there was no such resolution given in evidence, as to satisfy the words of the Statute.

The restrictive enactments of the 6 & 7 Wm. 4, and the 3 & 4 Vict. c. 108, were clearly for the purpose of disabling the corporation from dealing with their property in a different manner from that which they would have done, if they had not been aware that it would probably pass into other hands, as stated by the Lord Chancellor Sugden, in the case of *Attorney-General v. Corporation of Dublin*; 1 Drury & Warren.

But the Legislature thought, that they could safely except from the general prohibition grants in pursuance of a covenant or agreement *bond fide* made before a prior day, when the corporation would probably have entertained no expectation of being deprived of their property, and made, not merely when they were under a binding contract to convey, but even where they had bound themselves definitively by a resolution entered in their corporate books, to make a grant or lease; such a resolution as was final and complete, and required no further consideration or deliberation on their part, and which would constitute an agreement enforceable in equity if communicated to and acted upon by another, and expense incurred, according to the principle laid down by Sir John Leech in *Marshall v. Corporation of Queenborough*, 1 Simon & Stuart, 520, or even a resolution, though not enforceable in equity, such as was come to by the corporation of Coventry, and entered in their books in the case of *Wilmot v. Corporation of Coventry*, 1 Young & Collier. But we think that at all events it must be a re-

solution showing a clear and definite intention to grant a lease on certain definite terms.

If the resolution be of that character, we do not go so far as to say that it must be one for granting a lease to one particular individual; it may be to grant leases to several different persons by one resolution, or to a defined class, as to all freemen of a certain standing; but it must be a resolution, final in itself, and which requires no further consideration before the corporation determine to adopt it or not.

If it was open to them to consider after the 16th February, 1836, a subsequently completed resolution might be open to the suspicion of being unduly and improperly made.

Now the resolution of April, 1801, is by no means a complete resolution. It is made in favour of freemen, but with respect to all it is not final, but deliberative. It leaves it open for the corporation in each case, when the grant of a lease was asked for, to consider the valuation made by the valuers, and the character of the proposed lessee, and to reject the petition if they did not approve of either.

Whether that part of the resolution of 1801, that reports received at one assembly could not be taken into consideration at that assembly, still continued in force, or was tacitly repealed, we need not inquire, because whether it was or not, we think the resolution of 1801 was not such as the Statute requires, and the resolution of February, 1842, and the lease of the 15th February, 1842, not being founded on a sufficient resolution duly entered in the corporation books before February, 1836, are void.

It also appears to us that so long as the resolution continued unrepealed, not to renew until within five years of the expiration of the existing lease, no resolution to renew this lease could have been made before February, 1836, because the five last years of the former lease of 1786, did not begin till Michaelmas, 1840.

It may be proper to observe, that section 13 of the Statute 3 & 4 Vict. c. 109, which enacts, that that Act shall come into operation in, amongst other boroughs, Drogheda, on the day after the election of a town council, under the provisions of that Act, never could have intended to delay the operation of section 12, till that period; it must refer to the other parts of the Act. We consider section 12 to have been in force before that period, and the question on that section is that which we have stated.

We are of opinion that there was no resolution such as the Statute requires, existing in this case, that the direction of the Lord Chief Justice was wrong, and that there should be an award of a *venire de novo*.

Our opinion, if your lordships should act upon it, by giving judgment for the plaintiff in error, will not preclude the representatives of the original defendants from hereafter applying to and obtaining from the new corporation another lease under the 3 & 4 Vict. c. 108, s. 140, if the lessee was in the position of a per-

son to whom they were sanctioned or warranted, by ancient usage, or by custom or practice, to make a renewal of his lease, within the meaning of that clause.

## LAW OF ATTORNEYS AND SOLICITORS.

### SOLICITOR'S LIEN ON SUM PAID ON WITHDRAWING JUROR IN ACTION.

MESSRS. D. & H. acted for the widow and administratrix in an action against a railway company to recover compensation in damages under the 9 & 10 Vict. c. 93, for her husband's death, which resulted from a collision between two trains on the railway through the negligence of a fellow servant of the deceased. On the trial, Lord Campbell, C.J., after hearing the evidence, said, that no case of negligence had been made out, and the company's counsel then proposed to give the plaintiff 150*l.*, and a juror was thereupon withdrawn.

A rule had been obtained by Messrs. D. & H. calling on the defendants to show cause why they should not be restrained from paying the plaintiff personally the 150*l.*, without first satisfying their claim for costs, and why in default of the defendants paying the amount of their lien, the cause should not be tried afresh.

An affidavit was read in opposition to the motion, stating that the solicitors representing the company at the trial intended the 150*l.* to be a gratuity for the widow, and that they would not have consented to give that sum if they had imagined any part would be paid to the attorneys.

Jervis, C.J., said:—"There certainly is great difficulty in saying that the attorneys can, under the circumstances, call upon the Court to interfere."

Ultimately, however, a proposal was made and accepted that the plaintiff's attorneys should be paid to the extent of the moneys actually expended by them, including the costs incurred in obtaining letters of administration in order to enable the widow to bring the action. *Stretton v. London and North Western Railway Company*, 16 Com. B. 40.

## NOTES ON RECENT STATUTES.

### COMMON LAW PROCEDURE ACT, 1854.

#### DISCOVERY OF DOCUMENTS BEFORE PLEA.

A RULE was made absolute under the 17 & 18 Vict. c. 125, s. 50, for the discovery of documents *before plea* pleaded.

*And held*, that any privilege claimed must be shown in the affidavit sworn in obedience to the rule. *Forshaw v. Lewis*, 10 Exch. R. 712.

#### DELIVERY OF INTERROGATORIES TO OPPOSITE PARTY.

This was an application under the 17 & 18 Viet. c. 125, s. 51, for leave to the defendant to deliver interrogatories in writing to the plaintiff in this action, and it was opposed by an affidavit made by the plaintiff's attorney on the ground that the deponent believed that the questions proposed would criminate his client.

*Alderson*, B., said:—"If the plaintiff should refuse to answer any of the interrogatories without just cause, then the Court or a Judge is empowered under the 53rd section, to direct an oral examination of the plaintiff, upon such points as they may direct, before a Judge or Master. And after the plaintiff has been sworn before a Judge or Master, and a question is put to him which he believes has a tendency to criminate him, he may then object to it on that ground; and if the law be that laid down in *Fisher v. Ronalds*, 12 Com. B. 762, his bare statement that the question has such effect, will be a sufficient objection to the question. But the mere affidavit of his attorney is not sufficient. The system introduced by this Statute is an improvement upon the method of proceeding by bill of discovery." *Osborn v. London Dock Company*, 10 Exch. R. 698.

#### BUSINESS AT THE JUDGES' CHAMBERS IN CHANCERY.

##### DURING THE VACATION.

##### *Until further Notice.*

ALL applications which are necessary to be made at the Judges' Chambers are to be made at the Chambers of the Master of the Rolls.

Persons desiring to make any urgent special application to the Court during the vacation, are to apply at the Chambers for an appointment.

The Chambers of the Master of the Rolls will be open on Tuesdays, Wednesdays, Thursdays, and Fridays, in every week during the vacation, from 11 to 1.

All persons applying during the vacation to the Master of the Rolls for injunctions or for writs of *ne exeat regno*, are to proceed in the following manner:—

If the application be *ex parte*, a letter stating the order applied for, together with the affidavits, must be sent by the post, addressed to the Master of the Rolls, Cabalva, Hereford. On receipt of which, the Master of the Rolls will return the affidavits to the address stated in the letter, and will also enclose the terms of the order which he thinks proper to make, if any order be made—or otherwise, he will state the reasons why he thinks that no order should be made, or he will give leave to give a notice of motion in case he shall think such proceeding to be proper. The affidavits are to state precisely the dates when the plaintiff first became aware of the probability of the act being done, the commission of which act he seeks for an order to restrain.

If the application be for leave to give a notice of motion, then a letter must be sent to the Master of the Rolls to the same address, stating the facts necessary to explain why it has been necessary to proceed by notice instead of applying *ex parte*, in which case, if the Master of the Rolls shall be of opinion that the case is one proper to be heard in vacation, he will give leave to give a notice of motion and appoint a day and hour when he will hear the parties on the application at Hereford—or if both parties prefer it and will agree on the affidavits to be sent to the Master of the Rolls, and will send them accordingly to the above address, the Master of the Rolls will make such order on the perusal thereof as he shall think fit.

In matters of extreme urgency the Master of the Rolls will receive applications at any time at Cabalva.

#### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

##### *Royal Assents.*—July 30.

Places of Religious Worship Registration.  
Weights and Measures.  
West Indies Relief Loans.  
Incumbered Estates (Ireland) Act Continuance.

##### *House of Lords.*

Court of Prince of Wales Island. For 3rd reading.

Metropolis Local Management Report of Amendments.

Dissenters' Marriages. Report of Amendments, Aug. 2.

Nuisances Removal. Report of Amendments.

**Ecclesiastical Property (Ireland).** For 2nd reading.

**Speedy Trial of Offenders—Lord Brougham.** In Committee.

**Personal Estates of Intestates.** For 2nd reading.

**Passengers Act Amendment.** For 2nd reading.

**Metropolitan Buildings.** For 2nd reading.  
**Bills of Lading.** *Passed.*

#### *Bills Passed.*

**Crown Suits.**

**Powers under Improvement Acts.**

**Charitable Trusts.**

**Leases and Sales of Settled Estates.**

**Dispatch of Chancery Business.**

**Roman Catholic Charities.**

**Assizes and Sessions.**

**Youthful Offenders (No. 2).**

**Merchant Shipping.**

#### *Bills Withdrawn.*

**Mortmain.**

**Executor and Trustee Society.**

**Oath of Abjuration.**

**Landlord and Tenant (Ireland).**

#### *House of Commons.*

**Public Prosecutors and District Agents.—**  
**Mr. J. G. Phillimore.** In Select Committee.

**Dispatch of Business, Court of Chancery.** In Committee, Aug. 6.

**Episcopal and Capitular Estates.** In Committee.

**Limited Liability.** *Passed.*

**To Amend the Law of Partnership—Mr. Fitzroy.** Amended and re-committed, Aug. 6.

**Charitable Trusts.** In Committee, Aug. 6.

**Education.**—Sir J. Pakington. For 2nd reading.

**Criminal Justice.** For 3rd reading.

**Leases and Sales of Settled Estates.** In Select Committee.

#### *Bills Passed.*

**Passengers by Sea Regulation.**

**Metropolitan Buildings.**

**Metropolitan Local Management.**

**Bills of Lading.**

**Personal Estates of Intestates.**

**Youthful Offenders (No. 2).**

**Merchant Shipping.**

**Nuisances' Removal.**

#### *Bills Withdrawn.*

**Testamentary Jurisdiction.**

**Formation of Parishes.**

**Bankers' Drafts.**

**Justices of the Peace.**

**Bills of Exchange (Summary Diligence).**

**Assizes and Sessions.**

**Public Health.**

**Court of Chancery, Ireland (six Bills).**

**Marriage Law Amendment.**

**Bankruptcy Law Consolidation (Scotland).**

**Acts of Parliament Amending.**

**Medical Profession.**

**Powers under Improvement Acts.**  
**Grand Juries.**

#### LEASES AND SALES OF SETTLED ESTATES' BILL.

##### *Select Committee.*

The Solicitor-General.

Lord Seymour.

Mr. Napier.

Mr. Henley.

Lord Naas.

Mr. Isaac Butt.

The Solicitor-General for Ireland.

Mr. Lowe.

Mr. V. Scully.

Mr. Hadfield.

Mr. Mullings.

Mr. R. Phillimore.

Sir Erskine Perry.

#### NOTES OF THE WEEK.

##### LOARDS JUSTICES' COURT.—WANT OF GOOD VENTILATION.

THE rising of this branch of the Court is fixed for Friday, the 3rd of August, and when the heat of the weather is taken into consideration, it will be admitted that even lawyers are entitled to retire from the precincts of Lincoln's Inn. The jurisdiction in which the Lords Justices have been for a few days sitting, namely, that of Bankruptcy, causes a transfer from Basinghall Street to this place of so large a portion of the odours of the former, that all the windows of the Court are opened with the view to the admission of fresh air; but the benevolence of the Benchers having established conveniences for the public between the Courts of the junior Vice-Chancellors and the old hall, when the east windows are opened an ammoniacal blast is the only exchange obtained for exhausted air. Until it can be shown that ammonia is a proper substitute for oxygen, the Benchers would do well to attend to the continual complaints of the Bar in this respect and abate this nuisance, or, possibly the learned Judges, who are both Benchers, and who must themselves sometimes personally suffer from the infliction, might interfere to mitigate the olfactory pains of those who habitually attend this Bar.—From *The Times*, 31st July.

[When will the New Courts and Offices, to be built in the vicinity of Lincoln's Inn, be commenced? We understood the Government approved of the plan submitted to them by the Incorporated Law Society.]

##### LECTURES AT THE INCORPORATED LAW SOCIETY.

THE Lecturers appointed for the ensuing year at the Incorporated Law Society are,—  
Joseph Thomas Humphrey, Esq., of the



Middle Temple, (called to the Bar November 25, 1842,) to lecture on Equity and Bankruptcy.

Richard Baggallay, Esq., of Lincoln's Inn, (called to the Bar June 14, 1843,) to lecture on Conveyancing.

Robert Malcolm Kerr, Esq., of Lincoln's Inn, (called to the Scottish Bar February 18, 1843, and to the English Bar January 28, 1848,) to lecture on Common Law and Criminal Law.

#### LAW APPOINTMENTS.

Mr. Francis James Coleridge, Solicitor, has

been appointed Clerk of Assize on the Midland Circuit.

Mr. Thurston George Dale, Solicitor, Lincoln, has been appointed Clerk to the Land and Assessed Tax Commissioners, in the room of Mr. Richard Mason.

Earl Fitzhardinge, Lord Lieutenant of Gloucestershire, has appointed his brother, the Hon. Augustus Berkeley, to the office of Clerk of the Peace.

Edward Wetherell Rowden, M. A., of New College, Oxford, is appointed Auditor of Election Expenses for the University of Oxford.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lords Justices.

*Kaye v. Smith.* July 26, 1855.

**EQUITY JURISDICTION IMPROVEMENT ACT.—CROSS-EXAMINATION OF DEFENDANT ON AFFIDAVIT AFTER EXAMINATION BEFORE SPECIAL EXAMINER.**

*A special examiner was appointed by consent on a motion for an injunction, before whom the defendant, who had previously made an affidavit as to deeds and documents in his possession, attended on a subpoena duces tecum and was examined and cross-examined as to the questions at issue in the suit. The plaintiff afterwards amended his bill and obtained an order of the Master of the Rolls for the cross-examination of the defendant upon his affidavit: A motion to discharge such order was refused, with costs.*

THIS was a motion by way of appeal from an order of the Master of the Rolls directing the cross-examination of the defendant upon his affidavit as to deeds and documents in his possession under the 15 & 16 Vict. c. 86, s. 40.<sup>1</sup> It appeared that a special examiner had been appointed by consent on the motion for an injunction and some time after the affidavit was sworn, before whom the defendant attended on a subpoena duces tecum, and was examined and cross-examined as to the ques-

tions at issue in the suit. The plaintiff had afterwards amended his bill and obtained the order now sought to be discharged.

*Speed in support.*

The Lords Justices refused the motion, with costs.

*In re Tindall, ex parte Tindall.* July 28, 1855.

**BANKRUPT LAW CONSOLIDATION ACT.—TRADER DEBTOR SUMMONS.—PERSONAL SERVICE.**

*A trader debtor summons under the 12 & 13 Vict. c. 106, was served on the trader by showing him the original and leaving him a copy, but which did not have the name of the Commissioner signing: Held, an insufficient "personal service," and the adjudication thereon on the trader not appearing was annulled.*

Bacon and Lucas appeared in support of this appeal on behalf of a bankrupt against an adjudication founded on a trader debtor summons, which had been served on the trader by showing him the original summons and leaving him a copy thereof, but which did not set out the signature of the Commissioner. The trader did not appear and was adjudged a bankrupt.

By the 12 & 13 Vict. c. 106, s. 80, which enacts, that "if any such trader so summoned as aforesaid shall not come before the Court at the time appointed (having no lawful impediment made known to and proved to the satisfaction of the Court and allowed)," &c., "then and in either of the said cases, if such trader shall not within seven days after personal service of such summons, or within such enlarged time as may be granted to him in that behalf, pay, secure, or compound for such demand to the satisfaction of such creditor," &c. "every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after service of such summons."

*Swanston and Raymond, contra.*

The Lords Justices said, that the Act provided for a personal service by showing the original summons and leaving a true copy with the person served. In the present case, however, the document left differed in a material respect, as it purported to be a copy of that which without the signature of the Commis-

<sup>1</sup> Which enacts, that "any party in any cause or matter depending in the said Court may, by a writ of subpoena ad testificandum or duces tecum, require the attendance of any witness before an examiner of the said Court, or before an examiner specially appointed for the purpose, and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the Court, in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause; and any party having made an affidavit to be used or which shall be used on any claim, motion, petition, or other proceeding before the Court, shall be bound on being served with such writ to attend before an examiner, for the purpose of being cross-examined."

sioner could not have been a summons. The adjudication would be annulled.

*In re Williamson, ex parte Todd.* July 30, 1855.

**BANKRUPT LAW CONSOLIDATION ACT.—  
PROOF OF DAMAGES IN ACTION OF TORT.  
AWARD AFTER ADJUDICATION.**

*A verdict was taken by consent in an action to recover damages for a tort for an amount, subject to reduction on a reference. Before the award, but after verdict, the defendant was adjudged a bankrupt: Held, that the plaintiff could not prove under the 12 & 13 Vict. c. 106, s. 178, for the amount awarded and costs of the action.*

It appeared that a Mr. Bothamley had brought an action against this bankrupt to recover damages for the injury caused to his mill by the explosion of the bankrupt's steam engine, and that on the trial a verdict was taken by consent for 1,000*l.* subject to its reduction by the certificate of Mr. Hindmarch. After the verdict, but before the certificate given, the defendant was adjudged a bankrupt. Mr. Hindmarch afterwards certified for 338*l.* odd, and Mr. Bothamley claimed to prove that amount together with the costs. Mr. Commissioner *Jennett* having admitted the proof, this appeal was presented.

*Swanston and B. Lake Chapman* in support, on the ground that the 12 & 13 Vict. c. 106, s. 178,<sup>1</sup> did not apply to the present case.

*Walker, contra.*

<sup>1</sup> Which enacts, that "if any trader who shall become bankrupt after the commencement of this Act shall have contracted, before the filing of a petition for adjudication of bankruptcy, a liability to pay money upon a contingency which shall not have happened, and the demand in respect thereof shall not have been ascertained before the filing of such petition, in every such case, if such liability be not provable under any other provision of this Act, the person with whom such liability has been contracted shall be admitted to claim for such sum as the Court shall think fit; and after the contingency shall have happened, and the demand in respect of such liability shall have been ascertained, he shall be admitted to prove such demand, and receive dividends with the other creditors, and, so far as practicable, as if the contingency had happened and the demand had been ascertained before the filing of such petition, but not disturbing former dividends, provided such person had not, at the time such liability was contracted, notice of any act of bankruptcy by such bankrupt committed; provided also, that where any such claim shall not have, either in whole or in part, been converted into a proof within six months after the filing of such petition, it may upon the application of the assignees at any time after the expiration of such time, and if the Court shall think fit, be expunged either in whole or in part from the proceedings."

The Lords Justices said, that the order at *nisi prius* was made for the recovery of damages in tort. The bankruptcy, however, took place before the award, which was made without any participation of the assignees. The proof must therefore be expunged.

**Master of the Rolls.**

*Fry v. Noble.* July 11, 1855.

**SUIT FOR DOWER.—COSTS WHERE PLAINTIFF SUCCESSFUL.**

*In a suit by a widow claiming dower out of the estate purchased by the defendant of the heir of her deceased husband, she obtained a decree: Held, that she was entitled to costs, as the claim was unsuccessfully contested, although the question at issue was one of great nicety, and the resistance was not improper.*

THE plaintiff had obtained a decree in this suit, claiming dower out of an estate purchased by the defendant of the heir-at-law of her deceased husband.

The Master of the Rolls said, that as there was a contest to the plaintiff's right of dower, which had been unsuccessful, she was entitled to costs, although the question at issue was one of great nicety, and the resistance had not been improper.

*Follett* for the plaintiff; *Palmer* for the defendant.

**Vice-Chancellor Kindersley.**

*Bennett v. Powell.* July 25, 1855.

**BILL TO OBTAIN PAYMENT OF COUNTY COURT JUDGMENT DEBT OUT OF EQUITABLE INTEREST IN LEASEHOLDS.**

*The plaintiff obtained judgment in a County Court, under the 9 & 10 Vict. c. 95, against the defendant, who was entitled to an annuity charged on the rents of leasehold property: On bill filed to obtain payment, held, that the trustees must pay the amount out of the rents coming to their hands.*

It appeared that in April, 1851, the plaintiff, being with his ship at Adelaide, agreed to bring the defendant and his family to England for 60*l.*,—the defendant giving a memorandum, addressed to a Mr. Sanger, to pay the amount out of the rents of certain leaseholds, which were charged under the will of one Howell Powell, with the payment to the defendant of an annuity of 50*l.* The ship touched at the Cape, and the defendant, going on shore, outstayed his time, and the ship sailed to this country without him. On arriving in England, the plaintiff applied to Sanger, when it appeared that the houses were in the hands of trustees, who refused to make the payment; but eventually 22*l.* was paid. The plaintiff then entered a plaint in the Shoreditch County Court, and judgment was recovered for 57*l.* 13*s.* 8*d.*, under which execution was issued to the high bailiff, but there being no goods, nothing could be recovered.

The question now arose, on this bill being filed, to obtain payment of the judgment debt out of the leasehold rents, whether, under the 9 & 10 Vict. c. 95, ss. 93, 94, and 95, the word "chattels" would include leaseholds, as in the case of the sheriff of the Superior Courts, and therefore, whether this Court would aid the plaintiff in recovering the money obtained by the judgment of the County Court out of an equitable interest in leaseholds,—the 1 & 2 Vict. c. 110, taking away the remedy as to equitable interests.

*Bovill* and *W. Downing Bruce* for the plaintiff.

*W. Morris*, for the principal defendant, argued that as by the Statute of Frauds no leaseholds could be affected by a judgment until a *fi. fa.* had issued to the sheriffs, which could not take place from the County Court, and no proceeding could be taken in a Superior Court until after a judgment had been obtained for twelve months, whereas in this case six months only had elapsed, no proceedings under the County Courts Act could be taken to affect leaseholds.

*G. Simpson* for the trustees.

The Vice-Chancellor said, that it appeared to him that the principles of this Court as to making judgments available against equitable interests were applicable to the present case. This case was quite distinct from the cases cited, which were to obtain a judgment of a Superior Court, whereas this was not in the least to interfere with the judgment of the County Court, but to do that which the judgment could not affect. The high bailiff for this purpose stood in the place of the sheriff, and any other construction of the Act would be a very narrow one. The plaintiff was entitled to the relief which he asked, and as it was a most dishonest resistance of a just claim, his Honour should have been very sorry to have been obliged to decide otherwise. The trustees must pay the money out of the rents coming to their hands.

*Goddard v. Parr.* July 26, 1855.

TAKING AFFIDAVITS OFF FILE, DISCREDITING WITNESS ON QUESTION IRRELEVANT TO ISSUE.

*In a suit relating to a contract, a land surveyor was examined by the defendant, and cross-examined by the plaintiff, as to whether he had not obtained his living by telling fortunes and casting horoscopes. The plaintiff, on his reply in the negative, obtained the affidavits of two women in contradiction of his statement: A motion to take them off the file was granted, as being quite irrelevant to the issue, with costs to be paid by the plaintiff, who opposed.*

In this suit relating to a contract, it appeared that a land surveyor was called and examined by the defendant, and that the plaintiff afterwards cross-examined him, and asked whether he had not obtained a living by telling fortunes and casting horoscopes. The plaintiff, on his

answering in the negative, afterwards obtained the affidavits of two women, who stated that they had their fortunes told by the witness.

This motion was now made by the defendant to take the affidavits off the file.

*Baily* and *W. W. Cooper* in support; *Glassey* and *Welford* contra.

The Vice-Chancellor said, the rule was that if a party on examination was asked whether he had not been guilty of some act, his simple answer was sufficient, and it was not allowed to go into evidence as to his credibility, because there would otherwise be no limit to the inquiry. The question put was quite irrelevant to the issue, and the affidavits must be taken off the file, with costs to be paid by the plaintiff who opposed.

**Vice-Chancellor Stuart.**

*Jones v. Jones.* July 26, 1855.

DISMISSAL OF BILL WITH COSTS FOR WANT OF PROSECUTION.

*A bill was filed on April 12, 1854, and the answer on June 15 following, and it appeared that no further proceedings had been taken by the plaintiff, although he pressed for the answer to be filed: A motion was granted to dismiss, with costs, the bill for want of prosecution.*

It appeared that the bill in this suit was filed on April 12, 1854, and that the answer had been filed on June 15 following. The plaintiff had since taken no further proceedings, although he had pressed for the filing of the answer.

*Collins* now appeared for the defendant in support of this motion to dismiss for want of prosecution.

*Freeling*, contra.

The Vice-Chancellor said, that the plaintiff, 13 months ago, had pressed for an answer, but had since taken no steps in the cause, except to appear and oppose the present motion. The bill would therefore be dismissed, with costs.

**Vice-Chancellor Wood.**

*In re Howard.* July 14, 1855.

TRUSTEES' ACT, 1850.—VESTING ORDER AS TO COPYHOLD PROPERTY, WITH LORD'S CONSENT.

*A trustee for sale of copyhold property was admitted thereto, and afterwards died, and his customary heirs refused to act: A vesting order was made under the 13 & 14 Vict. c. 60, but upon the consent of the lord of the manor.*

*Lindley* appeared in support of this petition for a vesting order, under the 13 & 14 Vict. c. 60, in respect of certain copyhold property, to which a trustee for sale under a will had been admitted, but had since died. It appeared that his sons, who were the customary heirs, refused to act.

The Vice-Chancellor made the order, but upon the consent of the lord of the manor being obtained.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—"SMI attorneyed at your service."—*Shakespeare*

SATURDAY, AUGUST 11, 1855.

### LIMITED LIABILITY BILL.

THIS Bill has undergone so many alterations in its passage through the House of Commons, that we are induced to submit it to our readers in its present shape now before the House of Lords.

It first provides in the following mode for obtaining limited liability by *future* companies:—

Any joint-stock company to be formed under the Act of the 8 Vict. c. 110, (other than an assurance company,) with a capital to be divided into shares of a nominal value of not less than 10*l.* each, may obtain a certificate of complete registration with limited liability upon complying with the conditions following, in addition to doing all other matters and things now required, in order to obtain a certificate of complete registration;

- (1.) The promoters shall state on their returns to the office for provisional registration that such company is proposed to be formed with limited liability;
- (2.) The word "limited" shall be the last word of the name of the company;
- (3.) The deed of settlement shall contain a statement to the effect that the company is formed with limited liability;
- (4.) The deed of settlement shall be executed by shareholders holding shares to the amount in the aggregate of at least three-fourths of the nominal capital of the company, and there shall have been paid up by each of such shareholders on account of his shares not less than 20*l.* per cent.;
- (5.) The payment of the above per centage shall be acknowledged in or endorsed on the deed of settlement, and the fact of the same having been *bono fide* so paid shall be verified by a declaration of the pro-

moters, or any two of them, made in pursuance of the Act made in the 6 Wm. 4, c. 62:

And upon such conditions being complied with, and such other matters and things done, the registrar of joint-stock companies shall grant a certificate of complete registration with limited liability to such company; sect. 1.

Any joint-stock company, except as aforesaid, *now or hereafter completely registered* under the 8 Vict., may obtain a certificate of complete registration with limited liability, in manner and subject to the conditions following:

The directors of such company may, with the consent of at least three-fourths in number and value of its shareholders who may be present, personally or by proxy, at any general meeting summoned for that purpose, make such alteration in the name, nominal value of shares, and deeds of settlement of the company as may be necessary for enabling it to comply with the conditions hereinbefore-mentioned with respect to joint-stock companies seeking to obtain certificates of complete registration with limited liability; and upon compliance with such conditions the registrar shall grant to such company, by its new name, a certificate of complete registration with limited liability, and thereupon all privileges and obligations hereby attached to companies with limited liability, their shareholders, directors, and officers, shall attach to the company named in such certificate, its shareholders, directors, and officers; s. 2.

The mode of obtaining limited liability by *existing* companies, constituted under Acts of Parliament is thus provided for:

Any joint-stock company, except as aforesaid, constituted under any Act of Parliament, whereof it shall be proved to the satisfaction of the Board of Trade that not less than 20*l.* per cent. of the capital of

*such company has been paid up*, may obtain a certificate of complete registration with limited liability, in manner and subject to the condition following :

"The directors of such company may, with the consent of at least three-fourths in number and value of its shareholders who may be present, personally or by proxy, at any general meeting summoned for that purpose, make such alteration in the name as may be necessary for enabling it to comply with the condition in that behalf hereinbefore mentioned with respect to joint stock companies seeking to obtain certificates of complete registration with limited liability; and upon compliance with such condition the registrar shall grant to such company, by its new name, a certificate of complete registration with limited liability; and thereupon all privileges and obligations hereby attached to companies with limited liability, their shareholders, directors, and officers, shall attach to the company named in such certificate, its shareholders, directors, and officers; s. 3.

The following regulations are to be observed on obtaining complete registration with limited liability :—

Every company that has obtained a certificate of complete registration with limited liability shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all its notices, advertisements, and other official publications of such company, and in all bills of parcels, invoices, receipts, letters, and other writings used in the transaction of the business of the company; s. 4.

If such company do not paint or affix, and keep painted or affixed, its name, in the manner aforesaid, each of the directors thereof shall be liable to a penalty not exceeding 5*l.* for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any director or other officer of the company, or any person on its behalf, use any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issue or authorise the issue of any notice, advertisement, or other official publication of such company, or of any bill of parcels, invoice, receipt, letter, and other writing used in the transaction of the business of the company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of 50*l.*

No increase to be made in the nominal capital of any company that has obtained a certificate of complete registration with limited liability shall be advertised or other-

wise treated as part of the capital of such company, until it has been registered with the registrar of joint-stock companies ;

And no such registration shall be made unless a deed is produced to the registrar, executed by shareholders holding shares of the nominal value of not less than 10*l.* to the amount in the aggregate of at least three-fourths of the proposed increased capital of the company, nor unless it is proved to the registrar, by such acknowledgment and declaration as hereinafter mentioned, that upon each of such shares there has been paid up by the holder thereof an amount of not less than 20*l.* per cent.; and if any such increase of capital as aforesaid be advertised or otherwise treated as part of the capital of the company before the same has been so registered, every director of such company shall incur a penalty of 50*l.*; and the payment of the above per centage shall be acknowledged in or endorsed on the deed so produced, and the fact of the same having been *bond fide* so paid shall be verified by a declaration of the directors, or any two of them, made in pursuance of the Act 6 Wm. 4, c. 62.; s. 6.

The limitation of the liability of the shareholders is thus enacted :—

The members of a joint-stock company which has so obtained a certificate of complete registration with limited liability, after such certificate is granted, notwithstanding the provisions contained in the 8 Vict., *shall not be liable*, under any judgment, decree, or order which shall be obtained against such company, or for any debt or engagement of such company, *further or otherwise than is hereinafter provided*; s. 7.

*Executions against the company* are thus provided for :

If any execution, sequestration, or other process in the nature of execution, either at Law or in Equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy or enforce such execution, sequestration, or other process, then such execution, sequestration, or other process may be issued against any of the shareholders to the extent of the portions of their shares respectively in the capital of the company not then paid up : Provided that no such execution shall issue against any shareholder except upon an order of the Court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open Court after sufficient notice in writing to the persons sought to be charged; and upon such motion such Court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee; s. 8.

The rights of creditors of existing companies are preserved :

Where any company completely registered under the 8 Vict., or any company constituted under any Act of Parliament, shall obtain a certificate of complete registration with limited liability, the grant of such certificate shall not prejudice or affect any right which previously to the grant of such certificate has accrued to any creditor or other person against the company in its corporate capacity, or against any person then being or having been a member of such company, but every such creditor or other person shall be entitled to all such remedies against the company in its corporate capacity, and against every person then being or having been a member of such company, as he would have been entitled to in case such certificate had not been obtained ; s. 9.

As to the change in the name of the company under the Act, it is provided that—

No alteration made by virtue of this Act in the name of any company shall prejudice or affect any right which previously to such alteration has accrued to such company as against any other company or person, or which has accrued to any other company or person as against such company, but every such company as against any other company or person, and every other company or person as against such company and the members thereof, shall be entitled to all such remedies as they or he would have been entitled to if no such alteration had been made ; and no such alteration shall abate or render defective any legal proceedings pending at the time when such alteration is made ; s. 10.

Lord Redesdale has given notice of the following amendments :—

After clause 5, That 80 per cent. of the capital only shall be called for in carrying on the business, and 20 per cent. reserved on each share to be called for, if the company be wound up, to satisfy the creditors.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages :—

- Purchasers' Protection, 18 Vict. c. 15,—p. 5.
- Lunacy Regulation Act, c. 13,—p. 32.
- Commons' Inclosure, c. 14,—p. 32.
- Newspaper Stamp Duties, c. 27,—p. 137.
- Sewers (House Drainage), c. 30,—p. 139.
- Huntley Common, Gloucester, 10th August, 1854.
- Marschapel and Grainthorpe, Lincoln, 3rd March, 1855.
- Bamford, Derby, 5th April, 1855.

Seaton, Rutland, 24th June, 1854.

Volca Common Meadow, Hereford, 19th April, 1855.

Myarth Hill, Brecon, 19th April, 1855.

Berrow, Worcester, 10th May, 1855.

Nazeing, Essex, 14th December, 1854.

Sheet, Southampton, 19th April, 1855.

Bills of Exchange and Promissory Notes, c. 67, p. 256.

Cinque Ports, c. 48, p. 258.

Commons Inclosure (No. 2), c. 61,—p. 275.

Incumbered Estates Acts (Ireland) Continuance, c. 73,—p. 276.

Places of Religious Worship Registration, c. 81,—p. 276.

### COMMONS INCLOSURE (NO. 2).

18 & 19 VICT. c. 61.

The preamble recites the 12 & 13 Vict. c. 77 ; 15 & 16 Vict. c. 67 ; 16 & 17 Vict. 64.

Inclosures mentioned in the Schedule may be proceeded with ; s. 1.

Short title ; s. 2.

The following are the Title and Sections of the Act :—

An act to authorise the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales. [23rd July, 1855.]

Whereas the Inclosure Commissioners for England and Wales have, in pursuance of "The Acts for the Inclosure, Exchange, and Improvement of Land," issued their provisional orders for and concerning the proposed inclosures mentioned in the Schedule to this Act, and the requisite consents thereto have been given since the date of their Tenth Annual General Report : And whereas the said Commissioners have by a Special Report certified their opinion that such proposed inclosures would be expedient : but the same cannot be proceeded with without the previous authority of Parliament : Be it enacted as follows :—

1. That the said several proposed inclosures mentioned in the Schedule to this Act be proceeded with.

2. In citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use, either the expression "The Second Annual Inclosure Act, 1855," or "The Acts for the Inclosure, Exchange, and Improvement of Land."

### SCHEDULE TO WHICH THIS ACT REFERS.

Loddiswell, Devon, 14th December, 1854.

Skirwith, Cumberland, 11th January, 1855.

Northweald Bassett, Essex, 3rd Jan., 1855.

House of Commons' Proceedings, c. 33,—p. 139.

Income Tax, c. 20,—p. 197.

Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.

Administration of Oaths Abroad, 18 & 19 Vict. c. 42, p. 175.

Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.

Common Law Pleadings, c. 26,—p. 176.

Infants' Marriage Settlements, c. 33,—p. 198.

Palatine of Lancaster Trials, c. 45,—p. 241.

Petersfield Heath, Southampton, 19th April, 1855.

Bryn Postig Hill, Montgomery, 27th July, 1854.

Caversham, Oxford, 3rd May, 1855.

Lee Common, Bucks, 17th May, 1855.

Frilsham, Berks, 31st May, 1855.

Bottenden Hill, Bucks, 25th May, 1854.

Conisbrough Open Fields, York, 17th May, 1855.

Streasley, Bedford, 10th May, 1855.

Maulds Meaburn, Westmoreland, 7th Dec., 1854.

Kirkandrews Common, Cumberland, 19th June, 1855.

The Henallt Common, Brecon, 23rd June, 1855.

Llanganten, Brecon, 19th June, 1855.

Pithington Marsh, Sussex, 21st June, 1855.

Roydon, Essex, 19th June, 1855.

#### INCUMBERED ESTATES ACTS (IRELAND) CONTINUANCE

18 & 19 VICT. c. 73.

Period for applications for sale further extended.

The following are the Title and Section of the Act:—

An Act to extend the Period for applying for a Sale under the Acts for facilitating the Sale and Transfer of Incumbered Estates in Ireland. [30th July, 1855.]

Whereas an Act was passed in the Session of Parliament holden in the 12 & 13 Vict. c. 77, intituled "An Act further to facilitate the Sale and Transfer of Incumbered Estates in Ireland:" And whereas a certain other Act was passed in the Session of Parliament holden in the 15 & 16 Vict. c. 67, intituled "An Act to continue the Powers of applying for a Sale of Lands under the Act for facilitating the Sale and Transfer of Incumbered Estates in Ireland:" And whereas a certain other Act was passed in the Session of Parliament holden in the 16 & 17 Vict. c. 64, intituled "An Act for continuing and amending the Act for facilitating the Sale and Transfer of Incumbered Estates in Ireland:" And whereas the extended period within which such applications under said Acts as are mentioned in section 11 of said lastly-recited Act might be made was limited to two years from the 28th day of July, 1853: And whereas it is expedient that said period should be further extended: Be it therefore enacted, as follows: All such applications

under the said recited Acts or any of them as are mentioned in section 11 of the said lastly-recited Act, and which are by said section authorised to be made within two years from the 28th day of July, 1853, may be made within three years from the said 28th day of July, 1853; and all orders and proceedings by the said Acts or any of them authorised, and which might be made, had, or taken upon any application made within the said period of two years, may be made, had, and taken within the further period authorised by this Act.

#### PLACES OF RELIGIOUS WORSHIP REGISTRATION.

18 & 19 VICT. c. 81.

The preamble recites the 1 W. & M., Sess. 1, c. 18; 52 Geo. 3, c. 155; 31 Geo. 3, c. 32; 2 & 3 Wm. 4, c. 115; 9 & 10 Vict. c. 59; 15 & 16 Vict. c. 36.

15 & 16 Vict. c. 36, repeated, but places of worship certified thereunder to have force, &c.; s. 1.

Places of worship to be certified to Registrar-General; s. 2.

Places of meeting to be recorded; s. 3.

Places of meeting already certified, save those certified under 15 & 16 Vict. c. 36, may be certified to Registrar-General, and be recorded by him; s. 4.

Fee of 2s. 6d. to be paid with certificate to superintendent registrar; s. 5.

Notice to be given to Registrar-General of every place of meeting becoming disused for the purposes of which it was certified; s. 6.

List of certified places to be printed; s. 7.

Direction to the Registrar-General to cancel records of certificates of places of worship ceasing to be used as such; s. 8.

Certified places exempted from the operation of "The Charitable Trusts' Act, 1853;" s. 9.

Nothing to affect churches, &c., of Established Church; s. 10.

Certificate of place having been certified to be given; s. 11.

Sums received by or on account of registrar-General to be accounted for, and expenses defrayed as other expenses of the General Register Office; s. 12.

To remove doubts as to validity of marriage; s. 13.

Extent of Act; s. 14.

The following are the Title and Sections of the Act:—

An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England. [30th July, 1855.]

Whereas by an Act of the 1 W. & M., Sess. 1, c. 18, and an Act of the 52 Geo. 3, c. 155, places of meeting of congregations or assemblies for religious worship of Protestants (save as therein excepted with respect to places of worship of the Established Church and otherwise) were required to be certified to the Bishop's or Archdeacon's Court, or to the General or Quarter Sessions of the Peace, and to be registered in such Court, and recorded at such Sessions: And whereas by an Act of the 31 Geo. 3, c. 32, every place of congregation or assembly for religious worship of persons professing the Roman Catholic religion is required to be certified to and recorded at the General or Quarter Sessions of the Peace: And whereas by the two following Acts respectively, that is to say, an Act of the Session holden in the 2 & 3 Wm. 4, c. 115, and an Act of the Session holden in the 9 & 10 Vict. c. 59, her Majesty's subjects professing the Roman Catholic religion, and her Majesty's subjects professing the Jewish religion, in respect of their places for religious worship, are made subject to the same laws as Protestant Dissenters: And whereas by an Act passed in the Session holden in the 15 & 16 Vict. c. 36, places of meeting of congregations or assemblies for religious worship of Protestant Dissenters are required to be certified to the Registrar-General of Births, Deaths, and Marriages in England, and to be recorded in the General Register Office, in lieu of being certified to and registered and recorded in the Bishop's or Archdeacon's Court, and at the General or Quarter Sessions, as hereinbefore mentioned: And whereas it is expedient that all places of religious worship, not being churches or chapels of the Established Church, should, if the congregation should desire, but not otherwise, be certified to the said Registrar-General: Be it therefore, enacted as follows:—

1. The said Act of the 15 & 16 Vict. c. 36, shall be repealed: Provided always, that the certifying thereunder before the passing of this Act of any place of meeting for religious worship shall, subject to the provisions hereinafter contained, have the same force and effect from the time of such certifying as if the same had been duly certified, registered, and recorded as before the passing of the said Act of the 15 & 16 Vict. c. 36, was required by law, and such Act and this Act had not been passed.

2. Every place of meeting for religious worship of Protestant Dissenters or other Protestants, and of persons professing the Roman Catholic religion, by the said Acts of W. & M., the 31 & 52 Geo. 3, and the 15 & 16 Vict. c. 36, or any of them, required to be certified and registered or recorded, as therein mentioned, and not heretofore certified and registered or recorded, in manner required by law, and every place of meeting for religious worship of persons professing the Jewish religion, not heretofore certified and registered or recorded as aforesaid, and every place of meeting for religious worship of any other body or denomi-

nation of persons, may be certified in writing to the Registrar-General of Births, Deaths, and Marriages in England, through the Superintendent Registrar of Births, Deaths, and Marriages of the district in which such place may be situate; and such certificate shall be in duplicate, and upon forms in accordance with Schedule A. to this Act, or to the like effect, such forms to be provided by the said Registrar-General, and to be obtained (without payment) upon application to such superintendent registrar as aforesaid; and the said superintendent registrar shall, upon the receipt of such certificate in duplicate, forthwith transmit the same to the said Registrar-General, who, after having caused the place of meeting therein mentioned to be recorded as hereinafter directed, shall return one of the said certificates to the said superintendent registrar, to be redelivered by him to the certifying party, and shall keep the other certificate with the records of the General Registrar Office.

3. The said Registrar-General shall cause all places of meeting for religious worship certified to him under this Act to be recorded in a book to be kept by him for that purpose at the General Register Office, and no such place of meeting as aforesaid shall be certified to or registered in any Court of any bishop or archdeacon, or be certified to or recorded at any general or quarter Sessions; and the certifying to the said Registrar-General of any such place of meeting for religious worship of Protestant Dissenters or other Protestants or Roman Catholics, or persons professing the Jewish religion, and of any place of meeting for religious worship of any other body or denomination of persons, shall, subject to the provisions herein contained, have the same force and effect as if such place had been duly certified and recorded or registered and recorded as before the passing of the said Act of the 15 & 16 Vict. c. 36, was required by law, and such Act and this Act had not been passed.

4. Any place of meeting for religious worship heretofore certified and registered or recorded in manner required by law, and which continues to be used for religious worship, save any such place of meeting certified to the said Registrar-General under the said Act of the 15 & 16 Vict. c. 36, may, at any time after the passing of this Act, be certified in writing to such Registrar-General through the superintendent registrar of the district in which such place may be situate, and shall be recorded by such Registrar-General in manner hereinbefore mentioned concerning places of meeting not heretofore certified and registered or recorded.

5. Upon the delivery of every certificate to the superintendent registrar for transmission to the Registrar-General for the purpose of being recorded under this Act, the person delivering the same shall pay to such superintendent registrar for his own use the sum of 2s. 6d., and it shall not be lawful to demand or take any greater fee or reward for the same respectively.

6. Whenever any place of meeting for re-



ligious worship which may have been certified under the said Act of the 15 & 16 Vict. c. 36, or this Act, shall have wholly ceased to be used as a place of meeting for religious worship, the person or one of the persons who so certified or last certified the same (as the case may be), or the trustee or one of the trustees for the time being of such place of meeting, or the owner or occupier or one of the owners or occupiers thereof, shall, if then resident within the Superintendent Registrar's District within which such place shall be situate, forthwith give notice to the Registrar-General through such superintendent registrar that such place has so ceased to be used as a place of meeting for religious worship, such notice to be in a form in accordance with the Schedule B. to this Act, or to the like effect, and which form shall be provided by the said Registrar-General, and may be obtained (without payment) upon application to the said superintendent registrar; and the person giving such notice shall sign the same in the presence of such superintendent registrar or of his deputy, who shall forthwith transmit the same through the General Post Office to the Registrar-General at the General Register Office.

7. The said Registrar-General shall, in the year 1856, and also at such subsequent periods as one of her Majesty's Principal Secretaries of State shall from time to time in that behalf order or direct, make out and cause to be printed a list of all places of meeting which have been certified to and recorded by him under the said Act of the 15 & 16 Vict. c. 36, or this Act, and the record of which has not been cancelled as hereinafter provided, and shall state in such list the county and superintendent registrar's district within which each of such places of meeting is situated, and the religious denomination to which the persons for the time being certifying it belong, and shall cause a copy of such list to be sent to every Superintendent Registrar of Births, Deaths, and Marriages in England, and such list shall be open at all reasonable times to all persons desirous of inspecting the same, on payment to such superintendent registrar of a fee of 1s.

8. Whenever it shall appear to the satisfaction of the said Registrar-General, from any notice which shall have been given to him as aforesaid or otherwise that any certified place of meeting for religious worship has wholly ceased to be used as such, the said Registrar-General shall cause the record of such certification to be cancelled, and shall give public notice of the cancellation thereof by advertisement in some newspaper circulating within the district in which such place of meeting is situated, and in the *London Gazette*, and shall also expunge the name of such place from the list of certified places so to be printed by him as aforesaid; and after such cancellation and publication thereof as aforesaid such place shall cease to be deemed duly certified as by law required, and shall so remain until it shall have been duly certified afresh under this Act.

9. Every place of meeting for religious worship certified to the said Registrar-General under the said Act of the 15 & 16 Vict. c. 36, or this Act, and recorded by him as aforesaid, so long as the same continues to be *bond fide* used as a place of religious worship, and the record of the certification thereof has not been cancelled as hereinbefore is provided, shall be wholly freed and exempted from the operation of an Act passed in the Session holden in the 16 & 17 Vict. c. 137, intituled "The Charitable Trusts' Act, 1853, and shall not be subject or liable to any of the provisions of the same Act, save that the exempted charities may avail themselves of the 63rd and 64th sections of the said Act, if they shall think fit.

10. Nothing in this Act shall affect or be construed to affect the churches or chapels of the United Church of England and Ireland, or the celebration of Divine Service according to the rites and ceremonies of the said United Church by ministers of such church, in any place hitherto used for such purpose, or being now or hereafter duly consecrated or licensed by any archbishop or bishop or other person lawfully authorised to consecrate or license the same.

11. The Registrar-General, on payment to him of a fee of 2s. 6d., shall, with respect to any place certified to him as a place of meeting for religious worship, the record whereof remains uncanceled, give to any person demanding the same a certificate, sealed or stamped with the Seal of the General Register Office, that at the time or respective times in such certificate in that behalf stated the place therein described was duly certified and duly recorded as required by this Act, and that at the date of such sealed or stamped certificate the record of such certification remained uncanceled; and every such sealed or stamped certificate, if tendered in evidence upon any trial or other judicial proceeding in any civil or criminal Court, shall be received as evidence of the said several facts therein-mentioned, without any further or other proof of the same.

12. All sums to be received by or on account of the Registrar-General in pursuance of this Act shall be accounted for and paid in manner directed by the said Act of the 7 Wm. 4, "for registering Births, Deaths, and Marriages in England," with respect to sums received by him or on his account under the provisions of that Act; and all expenses incurred by the said Registrar-General, or by any superintendent registrar, or registrar, with his sanction and acting under his direction or authority, in carrying this Act into execution and making known its provisions, shall be deemed to have been incurred in carrying on the business of the General Register Office, and be defrayed accordingly.

13. Notwithstanding the provisions of this or any other Act, all marriages which heretofore have been had or solemnised in any building which has been registered for the solemnization of marriages pursuant to the provisions

of an Act passed in the 6 & 7 Wm. 4, c. 85, but which may not have been certified as required by the provisions of this or any other act, shall be as valid in all respects as if such place of worship had been so certified.

14. This Act shall not extend to Scotland or Ireland.

#### SCHEDULES REFERRED TO IN THE FOREGOING ACT.

##### Schedule (A.)

To the Registrar-General of Births, Deaths, and Marriages in England.

I, the undersigned (a) of in the County of do hereby, and by virtue of an Act passed in the year of her Majesty Queen Victoria, intituled "An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England," certify that a certain building known by the name of situate at in the county of within the superintendent registrar's district of (b) as a place of meeting for religious worship before the 30th June, 1852, and] is intended to be used as heretofore, (c) and will accordingly be forthwith used as a place of meeting for religious worship by a congregation or assembly of persons calling themselves (d) and I request that this certificate may be recorded in the General Registrar's Office, pursuant to the said Act. Dated this day of 185 .

(Signature of the party certifying.)

(e)

of the place of meeting above described.

*Directions for filling up the Schedule.*

(a) Here insert the name, residence, and county in which it is situate, and the rank or profession of the party certifying.

(b) If the place was not so used before 30th June, 1852, expunge this and the following line.

(c) If the building have not been previously used as a place of worship, erase the words "as heretofore."

(d) Here insert "Protestant Dissenters," "Independents," "Particular Baptists," "Wesleyan Methodists," Roman Catholics," "Jews," or other religious denomination of, or religious appellation adopted by the persons on whose behalf the building is certified; but if those persons decline to describe themselves by any distinctive appellation, erase the words "calling themselves," and insert "who object to be designated by any distinctive religious appellation."

(e) Insert on the line immediately under the signature the word "Minister," "Proprietor," "a Trustee," "Occupier," "an Attendant,"

or such other words as will clearly show the connexion subsisting between the person certifying and the place of meeting.

##### Schedule (B.)

To the Registrar-General of Births, deaths, and Marriages in England.

I, the undersigned of in the county of being the person or one of the persons who certified or last certified [or being "Trustee," or "one of the Trustees or one of the Owners or Occupiers" (as the case may be), of] a certain building known by the name of [or a certain dwelling house, &c. (as the case may be) situated at in the county of within the superintendent registrar's district of [and being now resident within the same district], do hereby declare and give you notice, in pursuance of an Act passed in the year of her present Majesty, chapter that the aforesaid building [or dwelling house, &c.] which was on the day of 185 , recorded by you as a place of meeting for religious worship by a congregation or assembly of persons calling themselves [or by a congregation or assembly of Roman Catholics, or of persons belonging to the Society of Friends, or of persons professing the Jewish religion (as the case may be)], has wholly ceased to be used as a place for public religious worship. Witness my hand, this day of 185 .

#### THE LATE MR. JUSTICE TALFOURD.

##### MONUMENT AT STAFFORD.

THE Members of the Bar of the Oxford Circuit, have recently erected on the south side of the Criminal Court at Stafford, a monumental bust, in honour of the late lamented Mr. Justice Talfourd, who died suddenly in that Court, on the 13th of March, 1854.

The inscription states that—

"ON THE JUDGMENT-SEAT OF THIS COVRT,  
WHILE ADDRESSING THE GRAND JURY,  
ON MARCH 13, 1854,

REIGN

SIR THOMAS NOON TALFOURD, KNT., D.C.L.,  
ONE OF THE JUDGES OF  
THE COVRT OF COMMON PLEAS,  
AN ACCOMPLISHED ORATOR, LAWYER, AND  
POET."

"THE MEMBERS OF THE OXFORD CIRCVIT  
ERECTED THIS MEMORIAL  
OF THEIR REGARD AND ADMIRATION  
FOR THEIR FORMER LEADER, COMPANION,  
AND FRIEND."

## MEMOIR OF WILLIAM SELWYN, ESQ., Q. C.

THIS learned member of the English Bar, died at Tonbridge Wells on the 25th July, at the advanced age of 81. He was the second son of William Selwyn, Esq., a Bencher of Lincoln's Inn. In 1797 he had gained the distinction of First Chancellor's medallist at Cambridge, when a member of St. John's College. In the same year he was admitted as a student at Lincoln's Inn, of which his father happened at the time to be treasurer. He was called to the Bar in 1807. About six years afterwards, he, jointly with Mr. Maule, became the reporter of cases decided in the Court of King's Bench, of which six volumes were published under the familiar title of "Maule and Selwyn." About this time the Profession had no other guide for its practice at Nisi Prius than the excellent, but antiquated "Buller's Nisi Prius," published about 1767. Mr. Selwyn found time, amidst his other avocations, to apply himself to the task of composing an entirely new treatise on the subject. "Selwyn's Nisi Prius" has been the circuit companion of every lawyer for the last 40 years. The 11th edition was recently published by the venerable author, having been greatly aided in the work by his son, Mr. Selwyn, of Lincoln's Inn, and Mr. W. G. Romaine, of the Inner Temple, the present Deputy Judge Advocate in the Crimea.

This edition was dedicated to his Royal Highness Prince Albert, with whom the learned advocate had, it is understood, read constitutional history shortly after the Prince's arrival in this country. Mr. Selwyn became King's counsel in 1827, whilst Lord Lyndhurst held the Great Seal, and for a long period held the recordership of Portsmouth. He was of the same family as the celebrated George Selwyn, the wit, and the man of fashion, whose memoirs have been published by Mr. Jesse, and of which a delightful review appeared in the *Edinburgh Review* for July 1844. The earlier ancestor of the Selwyn family was Colonel Selwyn, of Gloucestershire, who had been aide-de-camp to the Duke of Marlborough. Two of his sons have attained distinction, the one at the Chancery Bar, and the other in the Church, as the energetic and devout Bishop of New Zealand, whose recent university discourses have lately attracted attention, and won admiration for their moderation and good sense, combined with much piety and learning. The late Mr. Selwyn resided at Richmond, in Surrey, where he devoted much of his leisure and

fortune to the amelioration of the condition of the working classes, especially by laying the foundation of a mechanics' institution, and by keeping up a friendly and Christian intercourse with his poorest neighbours.

The learned gentleman retained his bodily and mental vigour until very near the end of his long and useful career. It was delightful to witness the activity of a man, who was one of the best classics of his day, in diffusing knowledge among the children of the Richmond cottagers. The tedium of his old age was cheered by frequent social intercourse, and enlivened by the constant study of his favourite classics. He was fond of gardening, and entered with gaiety and affability into the games and amusements of children. In person, Mr. Selwyn was rather above the average stature. His countenance, though "sicklied o'er with the pale cast of thought," was remarkably handsome,—his features wearing an expression of urbanity and refinement that were characteristic of the man.

Although he never enjoyed the pre-eminent position to which he was entitled, as an advocate in Westminster Hall, yet he took his fair share of sessions and circuit business. He spoke calmly, clearly, and correctly, and often illustrated his arguments by a felicitous quotation from the classical stores at his command. It is 35 years since his argument of a case at the Bar of the Court of King's Bench, which turned entirely upon circumstantial evidence. Relying upon the fact that the accused had shortly before the commission of the serious offence exhibited an ease and a serenity quite incompatible with the premeditation of a crime, he appealed to the knowledge of human nature, derived from history and experience, in confirmation of his view of his client's innocence,—reminding the learned Judges of the words of Shakespeare:

"Between the acting of a dreadful thing,  
And the first motion, all the interim is  
Like a phantasma, or a hideous dream;  
The genius and the mortal instruments  
Are then in council: and the state of man,  
Like to a little kingdom, suffers then  
The nature of an insurrection."

At this distance of time are remembered the gracefulness of the delivery, and the pleasure with which the recital was listened to by a crowded auditory, then assembled in the antique Court at the upper end of Westminster Hall.<sup>1</sup>

<sup>1</sup> This memoir has appeared in a Morning Paper; we re-publish it here with the assent of our learned friend, the writer.

## LAW OF COSTS.

## PAYMENT OF, WHERE FUND PAID INTO COURT UNDER TRUSTEES' RELIEF ACT.

A TESTATRIX gave a legacy of 100*l.* to her nephew, Mr. Thomas Turner, of Regency Square, Brighton. It appeared that the Christian name of the nephew living there was James, and that her other nephew was the Rev. Thomas Turner, and lived elsewhere. On extrinsic evidence being admitted upon a petition presented by Thomas Turner for payment out of the legacy which had been paid in under the 10 & 11 Vict. c. 96, James Turner was held entitled. All parties except the executors joined in asking that the costs should be paid out of the general estate of the testatrix, and not only out of the fund in Court, or that the Court would direct a bill or claim to be filed in order so to raise such costs.

In *re Sharpe's Executors*, 15 Sim. 470, and In *re Bartholomew's Will*, 13 Jur. 380, were cited.

The Vice-Chancellor Wood said, that he thought the executors might take their costs out of the residue, and that he was very unwilling to increase the costs by ordering a bill or claim to be filed; but he thought it so great a hardship that they should be thrown upon the fund in Court, that he would consider whether or not he should order a suit to be instituted. The residuary legatees meanwhile might see whether they had not better pay these costs.

His Honour afterwards said, that he thought the costs of all parties, except the executors, must come out of the particular fund by force of the provisions of the Trustee Relief Act, and that he was not justified in directing a suit to be instituted; the principle on which costs occasioned by the testator's mistake were paid out of the residue being that the estate could not be administered without determining the question; but now that the executor could pay the fund into Court, he was able to administer the estate on such payment. In *re Feltham's Trusts*, 1 Kay & J. 528.

## PROFESSIONAL FEES IN SCOTLAND.

## IN CONVEYANCING AND GENERAL BUSINESS.

## 1. Fees for Drawing, according to length.

1. ALL deeds, obligations, contracts, indentures, instruments and other writings not chargeable *ad valorem*;—inventories of writs relative to such deeds;—claims and

petitions in services; and tutorial and curatorial inventories.

If in the English language, first sheet of 250 words . . . £0 10 0

Every other . . . 0 6 0

If in Latin, first sheet . . . 1 0 0

Every other . . . 0 12 0

2. Memorials, cases, inventories, (except those specified above,) and other papers not chargeable as deeds.

First sheet . . . £0 6 0

Every other . . . 0 4 0

Where there are two parties to the transaction, the deed is prepared by agent for grantee, and paid for by grantor.

Indentures written by agent for master, and paid for by apprentice.

Going through and arranging title-deeds to be charged in complex cases according to the time occupied, besides the regulation fees of drawing the inventories.

## II. Fees relating to Sale of Heritable Subjects.

## 3. Articles of roup.

Charged according to length, *suprà*, 1.

4. Where it is provided that purchaser shall take instruments in terms of table of fees of faculty.

Where price under 500*l.* . . . £1 1 0

500*l.* to 1,000*l.* . . . 2 2 0

1,000*l.* to 3,000*l.* . . . 3 3 0

3,000*l.* to 5,000*l.* . . . 4 4 0

5,000*l.* and upwards . . . 5 5 0

To include attendance at sale and writing minutes of preference.

Where no sale takes place, attendance and writing minutes of adjournment, 10*s.* 6*d.*

## 5. Contract or minute of sale.

If there be no bond for the price one-half of the *ad valorem* fees of a disposition; if there be a bond for the price regulation fees.

To be drawn by seller's agent. When revised by purchaser's agent, half fees for revising. Fees to be paid by parties mutually.

## 6. Bond for the price.

One-half of *ad valorem* fees of disposition.

To be drawn by seller's agent and paid by purchaser.

## 7. Dispositions.

To the purchaser's agent, for drawing the deed, and final revision and adjustment of it, where the price does not exceed 2,000*l.*, for each 100*l.* or part of 100*l.*, a fee of . . . £0 10 6

The price exceeding 2,000*l.*, but not exceeding 5,000*l.*—the above rate for the first 2,000*l.*, and for every additional 100*l.* . . . 0 5 3

The price exceeding 5,000*l.*—the above rates for the first 5,000*l.*, and for every additional 1,000*l.* . . . 1 11 6

Besides regulation fees for drawing the deed, according to the length.

To the seller's agent, for revision of the deed and adjustment of it, one-half of the above fees *ad valorem* only.

The purchaser's agent draws the deed.

The seller's agent revises it.

Both concur in the final revision and adjustment.

The fees of drawing, engrossing, stamps, and inventory of writs, payable to purchaser's agent by seller; fees for revising payable to seller's agent by purchaser.

### III. Fees of Grants from Subject Superiors.

#### 8. Original feu-charters.

*To be charged according to the rate payable to the purchaser's agent in a disposition, (sup. 7.) estimating the price or sum paid, but if no price paid, 20 years' purchase of the feu-duty to be taken as the value of the subjects.*

The superior's agent draws the deed—the vassal pays for it.

#### 9. Contracts of feu, contracts of ground annual, building leases and bilateral deeds of this class.

*The same as No. 8.*

Disposer or superior's agent draws the deed—the whole expenses, including fees of revising, where deeds revised to be equally divided between the parties.

#### 10. Charters by progress, and precepts of *Clare Constat*, where the subject is an irredeemable right.

*If the value of the property, (estimated at 20 years' purchase of the present rent or feu-duty payable to the grantee, or of the annual value, if the property be in the natural possession of the grantee,) shall not exceed 1,000*l.*, regulation fees. If it shall exceed 1,000*l.*, one-third of the fees ad valorem payable to the purchaser's agent in a disposition (sup. 7), besides regulation fees, according to length.*

*But in properties from 1,000*l.* to 2,000*l.*, the total charge shall not exceed . . . £5 5 0*

*And from 2,000*l.* to 3,000*l.* . . . 7 7 0*

*Unless the regulation fees per sheet shall amount to more.*

Professional rule the same as No. 8.

#### 11. Charters, where the subject is an adjudication, or other redeemable right.

*The same as No. 10. But as in the case of adjudications, a large estate may be adjudged for an inconsiderable debt, or a small estate for a large debt, it shall be optional to the creditor, whether the fee shall be calculated on the value of the subject, or the sum in the adjudication.*

The superior's agent draws the deed—the vassal pays for it.

*2*s.* 6*d.* per sheet for engrossing in cartulary.*  
Paid by the vassal.

#### 12. Precepts of *Clare Constat*, writs of acknowledgment by debtor in favour of heir of creditor in heritable bonds.

*Same rates as charters, by Progress, No. 10.*

To be drawn by agent of heir, and paid for by heir; revising fee to debtor's agent to be paid by heir.

#### 13. Notarial instruments in favour of heir or of general disponee of creditor.

*Same rate as No. 10.*

To be drawn by agent of heir or general disponee, and paid for by them.

### IV. Fees of Securities for Money Lent, and Relative Deeds.

#### 14. Personal Bonds.

*For each 100*l.*, or part of 100*l.*, . . . £0 10 6*

#### 15. Heritable bonds and dispositions in security, or venditions in security.

*The same as 14, adding the regulation fees of drawing the deed, according to the length.*

#### 16. Bonds of annuity, whether personal or heritable.

*The same as 15, holding the price paid for the annuity as the amount of the Loan. Besides fees of the bonds 15 and 16, a fee to be chargeable for examining the title deeds according to the length of the progress and consequent trouble.*

#### 17. Bonds of corroboration.

*Where additional security is given, whether personal or heritable, or where the interest then due is accumulated with the principal, to be charged at one-third of the fees of a personal bond, upon the sum in the bond of corroboration, besides regulation fees, according to the length.*

*Where the bond is merely granted for the purpose of binding the heir of the original debtor, to be only charged at the regulation fees, according to the length.*

For obtaining the loan of money, the borrower's agent to be paid, by his own client, half the sum payable to the lender's agent, for preparing the bond; which includes revisal of the bond.

Where agent acts for both borrower and lender, one-third of the fee *ad valorem* to be allowed for procuring the loan and meetings and arrangements with lender.

The whole of these to be written by the agent of the grantee, and paid by the grantor.

#### 18. Discharges and renunciations of heritable debts; and discharges of debts constituted by personal bonds or other liquid documents.

*Where the sum is under 500*l.*, regulation fees—where above that sum double the regulation fees.*

To be written by agent of creditor, and paid by debtor, unless otherwise stipulated.

#### 19. Discharges of debts followed by decrees or diligence.

*The same as No. 18.*

To be written by agent for creditor, and paid for by debtor.

#### 20. Discharges of Legacies.

*One-half per cent. of the legacy, if below 200*l.*—if above that sum, one-half per cent. for the first 200*l.*, and one-fourth per cent. for all above.*

To be prepared by agent for testator's successors, and paid for by legatee.

#### 21. Assignations and translations of personal debts, and conveyances of heritable debts.

*Where the transaction is negotiated as a loan,*

the same fees are chargeable as on an original bond; where that is not the case, to be charged as renunciations.

To be revised by agent of grantees and paid for by debtor.

A revising fee to be paid to agent of granter by the debtor equal to the fees of a discharge.

### V. Fees of Family Settlements.

22. Deeds of entail, trust-dispositions and settlements, testamentary deeds and bonds of provision.

The regulation fees, according to the length of the deed, where the value of the property settled does not exceed 500*l.*; double Regulation fees where the value exceeds 500*l.* and does not exceed 2,000*l.*; and treble where it exceeds 2,000*l.*

In the case of entails and other settlements of landed estates, charges may be made also for attendances and correspondence.

23. Marriage contracts.

To be charged according to the total amount of the jointure and other income, provided and secured to the wife or husband, or both.

Where such income, so provided and secured, does not exceed in whole 30*l.* . . . £3 3 0

30*l.* to 50*l.* . . . 5 5 0

50*l.* to 100*l.* . . . 8 8 0

100*l.* to 150*l.* . . . 10 10 0

150*l.* to 200*l.* . . . 12 12 0

200*l.* to 250*l.* . . . 15 15 0

250*l.* to 300*l.* . . . 21 0 0

And for every 100*l.* beyond 300*l.* up to 1,000*l.* . . . 5 5 0

And for every 100*l.* beyond 1,000*l.* . . . 2 12 6

Besides the regulation fees of drawing, according to the length.

To be prepared by agent for the wife, and paid for by the husband.

### VI. Fees of Miscellaneous Deeds.

24. Tacks.

Where rent under 100*l.*, regulation fees 100*l.* and not exceeding 200*l.* . . . £2 2 0

200*l.* — — 300*l.* . . . 3 3 0

And for every additional 100*l.* or part of 100*l.* . . . 1 1 0

Duplicates, engrossing fees.

Always prepared by agent for landlord.

The fees and stamp duties to be paid equally by the landlord and tenant.

25. Venditions.

Regulation fees.

Same as in the case of dispositions.

26. Submissions and decrees arbitral.

For each of these deeds 1*l.* 1*s.* 6*d.*; regulation fees, additional for each sheet above two, besides the necessary attendance and writing minutes, notes of opinion, &c. by arbiters.

Submissions to be prepared by the agent of the party who is in petitorio and paid equally.

27. Contracts of excambion.

To be charged as dispositions, holding the value of the lands mutually excambied at the price.

The deeds to be prepared by the agent for

the one party, and revised by the other, as may be arranged between them. The agent who draws the contract to receive the fees payable in the case of a disposition to the purchaser's agent, and the agent who revises to receive the fees in the case of a disposition to the seller's agent; but the total expense to be equally divided between the parties.

28. Contracts of copartnery.

Where the stock of the company is defined, to be charged according to the amount of the stock, as follows:—

When the stock is under 500*l.* . . . £4 4 0

500*l.* and under 1,000*l.* . . . 5 5 0

1,000*l.* — 2,000*l.* . . . 6 6 0

2,000*l.* — 4,000*l.* . . . 7 7 0

4,000*l.* — 6,000*l.* . . . 8 8 0

6,000*l.* — 8,000*l.* . . . 9 9 0

8,000*l.* — 10,000*l.* . . . 10 10 0

And for every additional 100*l.* . . . 0 10 6

When the stock is not defined, the deed to be charged at double regulation fees, according to the length.

The deed to be prepared by the agent of any partner as may be agreed on, and the expense divided among the partners according to their interests in the concern.

29. Presentations to church livings.

Drawing the deed, and trouble in transmitting to presentee, or to the presbytery, &c. £5 5 0

Prepared by agent for patron.

30. Factories and powers of attorney.

When the debt to be recovered is under 100*l.* . . . £1 1 0

Above 100*l.*, and not exceeding 150*l.* 1 11 6

150*l.* — — 300*l.* 2 2 0

300*l.* — — 500*l.* 3 3 0

Or double regulation fees, in the option of the agent.

Where the amount is not known, or where it is for a variety of purposes, to be charged 3*l.* 3*s.* or double regulation fees.

Each certificate and affidavit to be charged, for the first sheet . . . £20 6 0

Every other . . . 0 4 0

### VII. Fees of Agency, and Correspondence.

31. Charges for time.

For time employed on business out of Glasgow, but within Scotland, per day, besides travelling expenses . . . £3 3 0

For time employed on business in Glasgow, per day . . . 2 2 0

For time employed on business in Glasgow, not exceeding an hour . . . 0 6 8

For each additional hour, after the first . . . 0 6 8

32. Correspondence.

For writing each letter, of an ordinary length, including booking . . . 0 3 4

But for letters which are necessarily longer, an additional charge to be made.

Ordinary letters or attendances which relate to deeds for which an *ad valorem* charge is allowed, or to transactions for which a factor-fee or commission is allowed, not to be charged.

But this is not to be understood to apply to the case where the agent is also a trustee. If he has a commission as a trustee, this does not preclude the charge for attendances and correspondence as agent.

### 33. Revising deeds drawn by others.

*Half of the fees for drawing.*

To be paid in every case to the agent by his own employer.

**N. B.**—The cases of dispositions, minutes of sale, and bonds for the price, are separately provided for, *sup.*

### VIII. Fees for Copying Papers.

#### 34. For copies of all papers falling under the description of No. 2.

*For each sheet of 250 words* . . . £0 1 0

*If Latin* . . . . . 0 2 0

#### 35. For engrossing deeds and other instruments, falling under the description of No. 1.

*First sheet 2s. 6d., each other* . . . £0 1 6

*If Latin, first sheet 3s., each other* 0 2 0

#### 36. For copies of states and accounts.

*For each sheet of an ordinary size* £0 1 6

*For ditto, extra size* . . . . . 0 4 0

### IX. Fees of Notarial Business.

#### 37. Sasines.

*Where the value of the property, or sum in the security does not exceed 500l.* . . £1 1 0

*500l. and not exceeding 1,000l.* . . 2 2 2

*1,000l. — — 2,000l.* . . 3 3 0

*2,000l. — — 5,000l.* . . 4 4 0

*5,000l. — — 10,000l.* . . 5 5 0

*And for every additional 5,000l. or part of 5,000l.* . . . . . 1 1 0

*Besides regulation fees for drawing the instrument, according to length.*

#### 38. Protesting bills.

#### 39. Noting bills.

*Regulated by Act of Sederunt, 12th May, 1833.*

#### 40. Miscellaneous notarial instruments.

*For Drawing the Schedule of protest, or the instrument, where no schedule is required.*

*For extending and attesting the instrument, where a schedule has previously been prepared.*

*To be charged as memorials, &c., Sup. 2.*

*First sheet, 2s. 6d.*

*Every other, 1s. 6d.*

*If the protest is taken at a distance from Glasgow, a separate charge to be made for the time occupied (Sup. .) and for travelling expenses.*

#### 41. Notarial copies.

*First sheet, 3s. 6d.*

*Every other, 2s. 6d.*

*Besides 6s. 8d. for certificate.*

### X. Fees in Bankruptcy Proceedings.

#### 42. Meeting with bankrupt and concurring creditor, receiving instructions to apply for sequestration.

*Fee* . . . . . £0 10 6

#### 43. Drawing affidavit by concurring creditor, drawing petition for sequestration, Petition for trustee's discharge, framing letter by trustee to creditors of notice of dividend, or of application for discharge, trustee's report to Sheriff or Lord Ordinary, drawing advertisements.

*First Sheet* . . . . . £0 6 0

*Every other* . . . . . 0 4 0

#### 44. Agency getting advertisements inserted in Edinburgh or London Gazettes.

*For each* . . . . . £0 3 4

#### 45. Attending meeting of creditors for election of interim-factor or of trustee, meeting to consider offer of composition, or trustee's application for discharge.

*If not exceeding an hour, and minutes not longer than two sheets* . . . £0 10 6

*For every hour beyond the first* . . 0 6 8

*If minutes more than two sheets, and charged according to length,*

*For the first sheet* . . . . . 0 6 0

*Every other* . . . . . 0 4 0

*But not to be charged both by time and according to length.*

#### 46. Agency lodging minutes and oaths of creditors with sheriff, obtaining deliverance by sheriff declaring interim-factor or trustee elected, diet fixed by sheriff for Bankrupt's examination, agency getting bond of caution signed by interim-factor or trustee and cautioner, and lodging same, obtaining confirmation of interim-factor or trustee, taking out act and warrant from sheriff clerk, and transmitting same to bill chamber clerk.

*For each of these separate acts* . . £0 6 8

#### 47. Drawing abbreviate of trustee's confirmation and recording same.

*Fee* . . . . . £0 6 8

#### 48. Consultations with trustee as to interrogatories to bankrupt, or in regard to affairs of estate, attending at bankrupt's examination or his declaration on offer of composition, advising trustee as to deliverance on claims of creditors.

*For each hour* . . . . . £0 6 8

#### 49. Attendance at decree of exoneration and discharge being pronounced, or deliverance approving of composition.

*For each act* . . . . . £0 6 8

#### 50. Ordering and taking out extracts of decree, approving of composition or discharge, and attendance getting up trustee's bond of caution.

*Fee for each act* . . . . . £0 3 4

#### 51. Attending meeting of creditor to audit trustee's accounts.

*Each hour* . . . . . £0 6 8

#### 52. Drawing bond of caution for composition.

*Same as personal bonds, according to value of estate as shown by trustee's report.*

*Limited to 10l. 10s.*

53. Bonds for composition under private settlement with creditors.

*Same as 52, so far as value can be ascertained.*

### XI. Executory Proceedings.

Superseded by Act of Sederunt, 10th March, 1849.

### XII. Revising Papers drawn in Court of Session Cases.

*If not exceeding 20 pages of writing,*

	£0 2 6
20 and not exceeding 40	. 0 5 0
40 — — 60	. 0 10 0
60 and upwards, .	. 0 15 0

### XIII. Procuring Infestments within Burgh.

*Where the property is under the value of 30l.*

30l. and under 100l.	£0 7 6
100l. — 200l.	. 0 10 6
200l. — 500l.	. 0 15 0
500l. — 1,000l.	. 1 1 0
1,000l. — 2,000l.	. 1 7 6
2,000l. and upwards, .	. 1 11 6
	. 2 2 0

### XIV. Registration of Heritable Bonds and Assignations and getting same entered in Minute Book, Attendance, Comparing and Revising Minute, and other Attendances and trouble connected therewith.

Where sum is under 500l. .	£0 10 6
500l. to 1,000l. .	. 1 1 0
1,000l. to 2,000l. .	. 2 2 0
2,000l. to 5,000l. .	. 3 3 0
5,000l. to 10,000l. .	. 4 4 0

*For every 10,000l. additional, or part thereof . . . . . 1 1 0*

*Of other deeds from 6s. 8d. to 13s. 4d. according to their importance and extent of trouble.*

(1.) In all the cases specified in the preceding Table, where charges *ad valorem* are allowed for the drawing of deeds, it is understood to be optional to the agent, to charge either the fees *ad valorem*, or the regulation fees of drawing, according to the length, as fixed No. 1.

(2.) The object of the preceding Table, as respects both the rates of charge, and the relative professional rules, is merely to regulate the cases therein enumerated where there is no particular stipulation on the subject. Of course, therefore, it is competent to the parties to make any arrangement between themselves, relative to all such matters, which they may consider more equitable, or convenient in the circumstances of each case. On the subject of commissions for selling and purchasing estates, and other money transactions, it has been found impracticable to afford even an approximation to a fixed rule; as the subjects of such charges are too much diversified, to allow the application of general rules. A commission is a remuneration for trouble and responsibility; and the only rule therefore for regulating it is the extent of that trouble and responsibility. In the case, *e. g.* of the sale or

purchase of an estate, it may happen that the man of business has no trouble whatever, the bargain being wholly settled by the parties themselves, the agent having nothing whatever to do but to prepare the necessary deeds. In such a case there can of course, be no room for commission.

### PARLIAMENTARY BUSINESS, RAILWAY COMPANIES, JOINT-STOCK COMPANIES, &c.

Preliminary meetings and attendances, whether for promoting or approving bills, 6s. 8d. *an hour*.

Drawing prospectus, Double registration fees.

Gazette notices,

*Five guineas for the first sheet, and one guinea for every other, besides the meetings and time occupied in consulting Acts of Parliament, &c.*

Parliamentary contract, Regulation fees.

Subscribers' deed of agreement,

*To be charged as a contract of copartnery at ad valorem fees, according to subscribed capital, including stock reserved by directors; but amount of fee in no case to exceed sixty guineas.*

Parliamentary contracts by directors of consolidated companies where no deed of agreement,

Double regulation fees.

Reference book, including expense of revising proofs, superintending printing and other trouble connected with getting it made up,

*3s. 4d. for each name in the book of reference, requiring a notice, besides outlay for travelling charges, &c.; to include trouble of clerks and country agents.*

Church-door notices,

*For each person necessarily employed 2l. 2s. a day, besides outlay.*

Deposit of plans with sheriff-clerks and school-masters,

*2l. 2s. each, besides travelling charges.*

Drawing, copying, and comparing notes and relative schedules, including duplicate,

*3s. 4d. for each name in the book of reference requiring notice.*

Serving notices,

*3s. 4d. each party, including parties at a distance, besides outlay.*

Meetings of committees,

*10s. 6d. for first hour, and 6s. 8d. an hour for each hour after the first.*

Correspondence,

*3s. 4d. and 6s. 8d. according to length.*

Drawing briefs,

*10s. for first sheet, and 6s. for every other.*

Framing precognitions,

*10s. for first sheet, and 6s. for every other.*

Circulars,

*1s. each if under 20; if above 20, 6d. each.*



Time in, and to, and from, London, where agent is either promoting or opposing bill, *5l. 5s. a day.*

Where a procurator or agent is attending merely as a witness,

*Fee not to exceed 3l. 3s. a day.*

For expenses in London, *2l. 2s. a day.*

Travelling expenses, *8l. 8s. each way.*

Clerks in London, if necessarily required, *2l. 2s. a day each, including expenses.*

Clerks travelling expenses, *5l. each way.*

Drawing bill,

*Twenty guineas if ordinary length of model bill; if exceeding that length 10s. for each additional sheet.*

Affidavits to prove standing orders, *1l. 1s. for each affidavit.*

Petitions in favour of or against a bill, *10s. for first sheet, and 6s. for every other.*

Commission receiving applications and attending at allocation of shares, *Same charge as brokers on amount of stock allocated.*

Issuing allocation letters, receiving back bankers' receipts, agency getting scrip signed, issuing the scrip, and making up register of subscribers, *6d. per share on shares paid-up, for the first 2,000, and for all above that number, 3d. per share.*

Appendixes to the contract, containing list of shareholders, lists of parties locally interested, and of shareholders holding 2,000*l.* and upwards of stock, *10s. for first sheet, and 6s. for every other.*

Lists of assents and dissents, *6s. for first sheet, and 4s. for every other.*

Commission on sums passing through agents' hands, and for acting as treasurers for companies, &c., *10s. per cent.*

It being optional to the agent to charge either the fees *ad valorem* for books of reference, notices, &c., or according to the time actually employed.

## SEARCHES AT THE REGISTER OF JUDGMENTS.

By sect. 13 of the 18 Vict. c. 15, for the *protection of purchasers*, "the searches of the several registers by the recited Acts 1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11; 3 & 4 Vict. c. 82; 13 & 14 Vict. c. 43; or by this Act authorised to be made for the sum of 1*l.*, may be made by the parties themselves under proper regulations in the office,

and the sum of 1*s.* only shall be payable on one search, although more names than one shall be searched for where such names shall relate to the same purchase, mortgage, or other transaction."

Under this Act the following regulations have been made:—

Previous to making any search all persons will be required to give the names of the parties they wish to search for, stating the nature of the transaction and the names which relate to the same purchase, mortgage, or other transaction.

This regulation, it is trusted, will prevent the abuse of printing and publishing the names of persons.

## INCORPORATED LAW SOCIETY.

### ANNUAL REPORT OF THE COUNCIL

26th June, 1855.

#### I. LAW BILLS IN PARLIAMENT.

SINCE the last Annual Meeting, the Council of the Society have given their attention to the general business of the Society, and especially to numerous Bills relating to the practice of the Law which have been under the consideration of Parliament.

It may be useful to state concisely the purport of the principal Acts so passed, and which in their progress through the Houses of Parliament were carefully watched by the Council, wherever the provisions they contained appeared to involve the interests of the suitors and the administration of justice.

The most important Act was the second *Common Law Procedure Act*,<sup>1</sup> which effected improvements, not only in the mode and forms of procedure, but in the jurisdiction of the Courts, facilitating and expediting the proceedings, and diminishing the expense of the suitors. Thus, it enables the Judges to try questions of fact by consent without a jury; to order cases of complicated accounts to be forthwith referred to arbitration; to examine the parties before trial; and obtain a full discovery of documents. Trials also may be adjourned; and the restrictions are relaxed in cross-examining witnesses, and the contradiction of a party's own witnesses. Proof of hand-writing by comparison may be admitted; documents insufficiently stamped are receivable in evidence on payment of the duty and a penalty. An appeal may be made on the refusal of a new trial; the oral examination of witnesses may take place on motions and summonses; injunctions may be issued; and judgment debtors may be examined to discover their assets; which may be attached or taken in execution.

Under the *Witnesses' Act*,<sup>2</sup> witnesses in Ireland or Scotland may be compelled to attend

<sup>1</sup> 17 & 18 Vict. c. 125.

<sup>2</sup> *Ibid.* c. 34.

and give evidence in England, and witnesses in England to give evidence in the Irish and Scotch Courts; but reserving the power of examining them before Commissioners.

The Act for registering *Bills of Sale* of personal property within 21 days, like warrants of attorney, is designed to prevent frauds on creditors.<sup>3</sup>

An Act was also passed "to make further Provisions for the more speedy and efficient Despatch of Business" in *Chancery*, by appointing additional temporary Clerks and Accountants to wind up the matters depending in the remaining Masters' offices, and, in case of need, to call in the aid of the solicitor to the Suitors' Fund.<sup>4</sup>

Another Act was passed extending the jurisdiction of the Court of Chancery of the County *Palatine of Lancaster* against persons residing out of its jurisdiction, and transferring appeals to the Lords Justices in Chancery instead of the Judges of Assize.<sup>5</sup>

The *Bankruptcy* Act enables the Lord Chancellor to diminish the expense of the establishment by not filling up the present or future vacancies; and it provides that a petitioning trader must show that his assets amount to 150l.<sup>6</sup>

An Act passed for taking Evidence in the *Ecclesiastical Courts vivâ voce*,<sup>7</sup> and another Act authorising the appointment of Commissioners to administer Oaths, and take Declarations, &c., relating to proceedings in the *Admiralty Court*, and providing that the Commissioners for Administering Oaths in Chancery may also take Affidavits, Declarations, &c., in proceedings in the Admiralty Court.<sup>8</sup>

The *Real Estate Charges Act*<sup>9</sup> directs, that in case of intestacy the heir shall not be entitled to have the incumbrance on the estate paid out of the personal property; and where a testator makes a will, and directs his estate to be sold, and does not otherwise direct, the land shall be deemed to be personal estate.

An Act was also passed to remove doubts concerning the due *Acknowledgment of Deeds* by Married Women,<sup>1</sup> whereby the deeds already acknowledged are, after the certificate of acknowledgment has been filed, rendered valid, although one or both of the Commissioners have been interested in the transaction, with certain exceptions in cases wherein proceedings were then pending; but authorising the Court of Common Pleas to make rules for preventing Commissioners who are interested from taking acknowledgments.

The total repeal of the *Usury Laws* has also taken place,<sup>2</sup> saving transactions previous to the Act, and providing that the legal or current rate of interest now payable on any contract shall mean the same as if the Act had not passed.

The Act to amend the Law relating to the *Stamp Duties*<sup>3</sup> provides a new scale for inland and foreign bills and notes; also on leases for terms exceeding 35 years, regulated by the amount of rent, and on duplicates or counterparts; with provisions as to adhesive stamps on bills and bankers' drafts; repealing the exemption from Receipt Stamp Duty on letters of acknowledgment; directing that deeds made for several valuable considerations shall be chargeable in respect of each; and indemnifying parties from omitting to state the full purchase-money in assignments on the sale of the goodwill of a business.

In the latter part of the last Session several Bills were postponed or negatived, and have reappeared in the present Session, to which reference will be hereafter made.

Of the new Bills which have been introduced in the present Session, four have already received the Royal Assent, namely:—

The Amendment of the *Lunacy Regulation* Act, enabling the Lord Chancellor to empower Committees of lunatics estates to grant leases binding on issue or remaindermen.<sup>4</sup>

The *Protection of Purchasers* in regard to Judgments of the Courts of Lancaster and Durham; the re-registration of judgments; the registration of judgments of Superior Courts; orders in bankruptcy; annuities and rent charges.<sup>5</sup>

The *Common Law Pleadings Act* (c. 26), and the *Stannary Court Act* (c. 32).

The other Bills relating to the Law now before Parliament are:—

The *Sales and Leases of Settled Estates*, under which it is proposed, in lieu of the enormous expense and delay of obtaining private Acts of Parliament, to transfer the power to the Court of Chancery, the principle having been recognised in the case of ecclesiastical matters, charities, and the Municipal Corporation Acts. It is proposed that any persons whose necessities require a power to lease their property in agriculture, mining, building leases, &c., should apply to one of the Judges of the Court of Chancery, to determine whether such lease should be granted, and to enable tenants for life to grant leases, unless the author of the settlement expressly forbids such a proceeding.

Next comes the measure authorising the Court of Chancery to settle the property of *Infants* on their marriage.

Another Bill proposes a more equitable distribution of the *Personal Estates* of persons dying *Intestate*.

And the Amendment of the Law of Mortmain is also proposed.

To which may be added the Bill for extending the *Charitable Trusts Act*, by empowering the Commissioners to approve of New Charitable Schemes, subject to an appeal to the Court of Chancery, and to apportion charities to different parts of a parish; to authorise partition and exchanges of land; and the appointment of official trustees.

<sup>3</sup> 17 & 18 Vict. c. 36.<sup>4</sup> *Ibid.* c. 100.<sup>5</sup> *Ibid.* c. 82.<sup>6</sup> *Ibid.* c. 119.<sup>7</sup> *Ibid.* c. 47.<sup>8</sup> *Ibid.* c. 78.<sup>9</sup> *Ibid.* c. 113.<sup>1</sup> *Ibid.* c. 75.<sup>2</sup> *Ibid.* c. 90.<sup>3</sup> 17 & 18 Vict. c. 83.<sup>4</sup> 18 Vict. c. 13.<sup>5</sup> *Ibid.* c. 15.

Such are the several Parliamentary measures which have been brought under the consideration of the Council. They would here briefly notice only the more prominent measures.

The *Testamentary Jurisdiction Bill*, which has been withdrawn for the present Session, proposed to vest the whole jurisdiction relating to wills and the granting of letters of administration in one Metropolitan Court, deriving its authority from the Crown, presided over by a Judge of its own, with a distinct class of officers, and called her Majesty's *Testamentary Court*, with a complete and exclusive jurisdiction. When this Bill re-appears, it will receive the continued attention of the Council.

The *Executor and Trustee Bill* is designed to incorporate a joint-stock company for the purpose of undertaking the execution of the private trusts of individuals. The Bill is based upon the same principles as those which were embodied in the Bills introduced by the South Sea Company and the Executor and Trustee Company last year. These Bills were fully considered by a Committee of the Lords, the result of which was that both Bills were rejected. Nothing has since occurred which affects the principle upon which the Committee of last Session reported against those Bills. On that occasion the Council felt it to be their duty to the public to bring under the consideration of the House of Lords the alteration of the public law proposed to be affected by those Bills, introduced as they were in the shape of private Bills; and the Council expect that, in the present Session, the question whether a private Bill of this nature should be passed or not will be discussed on public grounds upon the second reading. And that the Society may not have again to incur the expense which would be caused by an opposition in Committee.\*

The *Bills of Exchange, or Summary Diligence, Bill*, which was reintroduced this Session by Lord Brougham, and passed the House of Lords, was referred to a Select Committee of the House of Commons, together with another Bill brought in by Mr. Keating and Mr. Mullings, for preventing frivolous defences. The Council submitted their views to the members of the Committee, and ultimately the Committee reported that each Bill was founded on the principle of preventing fictitious defences on bills and notes, and of giving greater facilities to parties seeking the assistance of a Court of Justice: the Committee heard evidence as to the cost of proceedings under the Scotch system, as proposed in the Bills of Exchange Bill, and under the English system, adopted in the Bills of Exchange and Promissory Notes Bill. The Committee were of opinion that it was unadvisable to introduce a new system of procedure, if the forms of the English Law could be made available for the

object in view; and on hearing the evidence, it appeared that summary procedure might be easily introduced into English Law, and that the costs under the Scotch system would not, on the whole, be less than those which would be incurred under the English practice. The Bill has been accordingly amended.

Connected with the proposed registration of dishonoured Bills of Exchange, may be mentioned an abuse which has occurred in regard to the registration of bills of sale, and which, no doubt, would have prevailed if unpaid bills and notes were registered; namely, the publication of the names of all the persons granting such bills of sale.

An important Bill for promoting "*the Despatch of Business in the Court of Chancery*" has passed the House of Lords, for the purpose of increasing the number of junior clerks to the Equity Judges, transferring the business of the Report Office to the Clerks of Records and Writs, and (by a recent amendment) limiting the power of the London Commissioners to administer oaths to their own office, except in case of the sickness of the deponent. On this Bill the Council prepared several observations which were submitted to a considerable number of members of the House of Peers; and a deputation waited on Lord Lyndhurst, who kindly considered the suggestions made to him with reference to this Bill.

On the subject of the administration of oaths by London Commissioners, it may be mentioned that, some months ago, an attempt was made to exclude affidavits in Chancery sworn in any other place than the Commissioner's usual place of business; and, an affidavit having been refused to be filed, counsel were instructed on the part of the Society to bring the question before the Court, and the Lord Chancellor and Lord Justice Turner decided that affidavits might be sworn by a Commissioner at any place within 10 miles of Lincoln's Inn Hall and there was also a subsequent decision to the same effect. The Council are still watching the progress of this Bill, with a view to prevent the needless and most inconvenient alteration proposed.

Recently two Bills have been brought in on the important subjects of the *Limited Liability of Partners*, and the *Law of Partnership* in other respects, to which the Council are giving their best attention.

In the Criminal Law a Bill has been introduced for the appointment of *Public Prosecutors* and the conduct of prosecutions by *District Agents*. It is proposed to divide the kingdom into districts, and appoint for each district one or more barristers-at-law of *ten years'* standing, to conduct the criminal prosecutions, with deputies, being barristers of three years' standing, and assistant public prosecutors being barristers of five years' standing, to conduct the prosecutions at quarter sessions. Then another class of officers are to be appointed under the Act called "*District Agents*," who are to be attorneys-at-law of seven years' standing, or barristers

\* A considerable number of the members of the Society petitioned against the principle of this Bill, and it has since been abandoned by the promoters.

of five years' standing; and the justices are to appoint attorneys-at-law to assist these district agents. This Bill has been referred to a Select Committee, and is not expected to pass this Session.

Although no Bill has yet been introduced on the subject of a *General Register of Deeds or Titles*, it may be proper in this part of the report to state that the Council, having received from the Commissioners a series of questions for the opinion of solicitors, circulated them amongst the members of the Conveyancing Committee of this Society and other members thereof. The answers they received were considered by the Council with a view to a collective opinion of their body; but they found so much difference of opinion that they deemed it expedient to transmit the individual opinions which they had received to the Commissioners. The Council, however, submitted to the Commissioners copies of the two petitions and statements prepared by them, when the Bill for establishing a General Register of Assurances was under the consideration of Parliament, and, in a letter to the Commissioners, added that, so far as the statements and observations apply to the subject of a General Registration of Deeds, the Council still retain the opinions therein expressed.

Proposed assimilation of the *Mercantile Law* of England, Ireland, and Scotland:—The Council have had under their consideration the questions issued by the Mercantile Law Commissioners relating to contracts for the sale of goods and chattels, warranty, actions, bills of exchange and promissory notes, limitation of actions, and prescription, law of shipping, lien, bailments, guaranties, principal and surety, debtor and creditor, partnerships, and joint-stock companies. The Council have not been able to offer a collective opinion on these various and important branches of law, but some of the members of the Society have made their individual suggestions to the Commissioners.

## II. THE REMUNERATION OF SOLICITORS AND THE RULES OF TAXATION.

The members are aware that for several years the Council have been engaged in the endeavour to improve the system of taxation. The alterations effected by the Claim Orders of 1860, and the Acts and Orders of 1862, have had the effect of reducing the emoluments of solicitors by at least 30 or 40 per cent., whilst their personal labour and responsibility have been very considerably increased. In the month of March, 1854, and April last, the Council submitted to the Lord Chancellor statements of the case of the solicitors in this respect, which will be found in the Appendix; and the result, after various attendances upon the Lord Chancellor and the Master of the Rolls, has been that the consideration of this important subject has been delegated to Lord Justice Turner and Vice-Chancellor Wood, with the assistance of Mr. Follett and Mr. Walton.

The Commissioners have commenced the in-

vestigation by the letter addressed by the Lord Justice Turner to the several law societies, and to individual solicitors, a copy of which will be found in the Appendix.

It would have been more satisfactory to the Council if some practising member of the Profession had been placed upon the Commission of Inquiry; but they nevertheless have the most perfect confidence in the honour and integrity of the Commissioners selected, and in their desire to do substantial justice to the Profession; and the Council trust that the appeal thus made by them to the Lord Chancellor will have the effect of introducing an improved system of taxation, which shall be just and satisfactory, as well to the Public as the Profession. The Society may be assured that the Council will use their utmost endeavours to attain such a desirable result.

## III. LEGAL AND GENERAL EDUCATION.

Some time has elapsed since the extension of the Examination was proposed in classical and scientific subjects, either before or during the articles of clerkship. Many meetings have taken place, and much consideration of the subject has been bestowed by the Council and the Committee; and in the Appendix an account is given of the labours of the Committee. The Council think it will be expedient to propose to the Judges that the student should have acquired a knowledge of English History, Geography, the Latin and French languages, Arithmetic and Book-keeping; and that the examinations should take place, and certificates of proficiency be granted by competent examiners, either before or during articles, or before admission; and that such examination may take place either in London or in the provinces, as may be convenient.

## IV. NEW COURTS AND OFFICES.

The members are aware that for 14 years the Council have, whenever opportunity offered, urged on both the Government and Parliament the necessity of New Courts and Offices for the administration of justice.

Since the report of last year the Council have addressed the First Commissioner of Public Works, and called the attention of Members of Parliament to the subject. They have represented to the Government that the existing Courts and Offices of the Superior Courts of Law and Equity are unfit for the due administration of justice, and for the convenience of the Judges, the Bar, the Solicitors, and the Suitors. During the last 30 years many additional Judges have been appointed, but no permanent accommodation has been provided for them; and they referred to an accompanying list of Courts and Offices required for the due despatch of business.

They proposed that a building containing proper accommodation for all the Courts and Offices should be erected on a convenient site, and that the expense should be defrayed out of the Surplus Fund in the Court of Chancery, which has arisen from what may be termed

the bankers' profit, derived from the investment of the unemployed cash balances in the hands of the Accountant-General; and they proposed that the Consolidated Fund should pay to the Sutors' Fund an annual rent equivalent to the dividends on the stock sold and applied for the purpose.

It appears to the Council that the plan for the completion of the Houses of Parliament contemplates the removal of the building containing the Courts of Law and the throwing open of the site; and if that be the case the building of new Courts is only a question of time. The Council, however, will do all in their power to promote this necessary object.

#### V. THE EXAMINATION AND REGISTRATION OF ATTORNEYS.

During the last four Terms 398 Candidates have been examined; of whom 355 were passed and 38 postponed. In the same period 347 were admitted on the Roll. Comparing these numbers with those of former years, it appears there is a considerable diminution of new members on the Roll, although the wealth and population of the country has largely increased.

[To be continued.]

#### COSTS OF A SOLICITOR-TRUSTEE.

THE recent decision in the case of *Broughton v. White* will doubtless operate most beneficially as a lesson to professional men to eschew trusteeships, if they are to be so unconscientiously and dishonestly deprived of their costs. Such a rule appears now to be clearly established, and considering that it is more honoured in the breach than in the observance, I trust in this age of reform that a rule will be made, or an Act of Parliament passed, to remedy the iniquitous evil, which actually operates in carrying it out to the absolute ruin of families. Surely the scrutinizing eye and great experience of the Taxing Masters would be an adequate protection to the public to ascertain that no needless work was done for the sake of costs.

I have stated it operates to the ruin of families. What can be said in justification of the conduct of parties who, after having had the advantage of the professional services of a gentleman at the height of his profession for nearly a quarter of a century, have actually called upon him to *refund the whole of his charges* during that long period, amounting to *thousands*, and which were from time to time paid by the *honourable* party to his solicitor, who is only one of a firm?

A SOLICITOR OF UPWARDS  
OF 50 YEARS.

#### SELECTIONS FROM CORRESPONDENCE.

##### COSTS OF A SOLICITOR-TRUSTEE EMPLOYING AN AGENT.

CAN you refer me to a case decided about a twelvemonth ago, wherein a solicitor-trustee declined to act personally in the legal business of the trust, but employed an agent, and wherein it was decided that the solicitor was held only to be entitled to the money he had actually disbursed out of the purse, and the agent's costs? We frequently see clauses inserted in settlements and wills giving the solicitor his full costs, notwithstanding his position,—but it is somewhat problematical whether such a stipulation is valid. Has its legality ever been considered and established?

ONE, &c.

[We think the legality of such a clause is unquestionable. Where there is no such provision, neither the solicitor nor his partner can recover more than costs out of pocket.—ED.]

##### LAW OFFICERS OF THE CROWN.

In order to leave the choice of Judges perfectly free, it may be worth consideration whether in all future appointments of Attorney and Solicitor-General, looking at the immense importance of the subject, it might not be proper to stipulate that it must not be understood that they are entitled either of right or as a matter of course to a seat on the judicial Bench, at the same time that it should not be considered a bar to the elevation.

CIVIS.

#### NOTES OF THE WEEK.

##### SETTLED ESTATES BILL.

WE regret to learn that the Solicitor-General has deemed it necessary to yield to the opposition against this Bill, and postpone it to the next Session.

##### CHARITABLE TRUSTS AND CHANCERY BUSINESS BILLS.

We understand that these measures will be pressed forward by the Government.

##### THE WESTERN CIRCUIT BAR.—TWO NISI PRIUS COURTS.

During the time the Bench and the Bar were discussing the question of having two Nisi Prius Courts sitting at once at Walls, Mr. Justice Crompton observed, that if there had been any very great difference in the talent of the leaders and juniors, he should have thought the sending cases to be tried in the other Court, and to be conducted by the juniors, somewhat hard upon the suitors, but really on this circuit he saw so little distinction

that he was sure the suitors would not at all suffer by the duty of leading being cast upon the juniors.—From *The Times* of Aug. 8.

[This observation of the learned Judge cannot, of course, be received as any disparagement of the leading members of the Bar on that Circuit, but as undoubtedly a high compliment to the Junior Bar.—ED.]

#### LAW APPOINTMENTS.

*James Edward Davis, Esq.*, has been appointed a Revising Barrister, in the room of *C. S. Whitmore, Esq., Q. C.*

*Mr. William Gaisford, Solicitor*, of Berkeley, has been elected Coroner for the Western Division of Gloucestershire, in the room of the late *Mr. W. Joyner Ellis*.

The Hon. *Edward Pleydell Bouverie, M.P.*, Barrister-at-law, has been appointed President of the Poor Law Board, in the room of The Right Hon. *Matthew Talbot Baines*, resigned.

*Robert Lowe, Esq., M.P.*, Barrister-at-Law, has been appointed Vice-President of the Board of Trade, in the room of the Hon. *Edward Pleydell Bouverie*, appointed President of the Poor Law Board.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### Lord Chancellor.

*Score v. Oldfield.* Aug. 6, 1845.

PETITION FOR PAYMENT OF FUND OUT OF COURT TO ASSIGNEES OF MORTGAGE.—DISPENSING WITH SERVICE ON MORTGAGORS.

*Service of a petition for payment out of Court of a fund of 535l. to the assignees of the mortgage thereof dispensed with on the mortgagors, who were in Australia, upon an affidavit of the consideration-money—500l. having been duly paid.*

This was a petition for the payment out of Court of a sum of 535l., on behalf of the assignees of a mortgage thereof made to the petitioners in consideration of 500l. about six years ago by Mr. and Mrs. Barrett. It appeared that in 1851 these parties had left this country for Australia, and that their exact residence was not known—their letters being directed to the post office, Adelaide.

*Speed*, in support, asked for payment without service of the petition on the mortgagors.

The Lord Chancellor said, that the order would be made on an affidavit that the consideration-money had been duly paid.

#### Lords Justices.

*In re Haywood, ex parte Walker.* Aug. 1, 1855.

BANKRUPT LAW CONSOLIDATION ACT.—TRADER-DEBTOR SUMMONS.—PETITION FOR ARRANGEMENT.

*On a trader-debtor summons, the bankrupt signed an admission of the demand under s. 79 of the 12 & 13 Vict. c. 106, but did not pay, &c., in accordance with s. 81, within the seven days. The creditor did not proceed until 18 days after such time, and in the meanwhile the debtor petitioned under the arrangement clauses: Held, that, in the absence of any reason for such delay, the creditor had lost his right to proceed.*

It appeared that the petitioner had taken out a trader-debtor summons against the

above bankrupt under the 12 & 13 Vict. c. 106, but that before the expiration of the eight days required to elapse by s. 81,<sup>1</sup> before an act of bankruptcy is committed, the bankrupt, who had signed the admission of demand under s. 79, presented a petition under the arrangement clauses of the Act (s. 211, *et seq.*)

*G. M. Giffard*, in support, contended that this proceeding of the bankrupt did not oust the right of the petitioner, although he had not proceeded on the summons for about 18 days.

*Bacon and Woodroffe*, contra.

The Lords Justices said, that, if no delay had taken place, the proceeding under s. 211 would not have availed against the petitioner; but that, if no reason were shown for such delay, he would lose his right to proceed.

#### Vice-Chancellor Kindersley.

*In re March Charities.* Aug. 2, 1855.

APPLICATION OF PURCHASE-MONEY OF CHARITY LANDS TO BUILDING SCHOOL-HOUSE.—CONSENT OF COMMISSIONERS.

*Upon a reference to the Master in 1849, a scheme for a charity was settled, which directed the building of a school-house. Certain lands were taken belonging to the charity, and the purchase-money paid into Court: An order was made on petition for*

<sup>1</sup> Which enacts, that "if any such trader so summoned as aforesaid, shall upon his appearance sign and file an admission of such demand in the form aforesaid, and shall not within seven days next after the filing of such admission, pay or tender and offer to pay to such creditor the amount of such demand, or secure or compound for the same to the satisfaction of the creditor, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after the filing of such admission, provided a petition for adjudication of bankruptcy shall be filed against such trader within two months from the filing of such affidavit."

*the application of such purchase-money in building the school-house, and for leave to the trustees to borrow the remaining sum required, to be repaid by instalments out of the rents; and held that the consent of the Charity Commissioners was not required.*

THIS was a petition for the application of the purchase-money of certain lands belonging to the above Charities and which had been taken by the Eastern Counties' Railway Company, towards making up a deficiency in the funds required to build a school-house in accordance with the scheme settled on a reference to the Master in 1849, and for leave to the trustees to borrow 600*l.* to complete the works,—such sum to be paid back by instalments out of the rents.

Osborne, in support, cited *In re Kettering Grammar School*.

Wickens for the Attorney-General; J. T. Wood for the railway company.

The Vice-Chancellor made the order as asked, upon the case cited, and held that the consent of the Charity Commissioners was not necessary.

#### Vice-Chancellor Stuart.

*In re Skidmore's Estate.* June 29, 1855.

DISALLOWANCE OF COSTS OF IRRELEVANT MATTER IN AFFIDAVIT ON PETITION.—EXHIBITS.

*The affidavit on petition for payment out of Court of the purchase-money of lands, on the title of which difficulties had arisen, contained irrelevant matter, and made the abstracts of title, &c., exhibits: A direction was given to the Taxing Master under the 122nd Order of May, 1845, to disallow the unnecessary costs thereby occasioned.*

ON this petition for payment out of Court of the purchase-money of certain lands taken by the Corporation of the City of London, under the powers of the Clerkenwell Improvement Act, 1854, and in reference to the title of which difficulties had arisen,

Baggallay appeared for a direction to the Taxing Master to disallow the costs of so much of an affidavit as contained irrelevant matter, and made exhibits the abstract of title, &c.

By the 122nd Order of May 8, 1845, it is provided, that "if upon the hearing of any cause, petition, or motion, the Court is of opinion that any pleading, petition, or affidavit which has not been referred for impertinence, or any part of any such pleading, petition, or affidavit, is improper or of unnecessary length, the Court may either declare such pleading, petition, or affidavit, or any part thereof, to be improper or of unnecessary length, or may direct the Taxing Master to look into such pleading, petition, or affidavit, and distinguish what parts or part thereof are or is improper or of unnecessary length, and may direct the Taxing Master to ascertain the costs occasioned to any

party by such parts or part thereof as in the one case may have been declared to be, and in the other case may have been distinguished as being, improper or of unnecessary length, and may make such order as is just for the payment, set-off, or other allowance of such costs."

The Vice-Chancellor made the direction accordingly.

*Attorney-General v. Hardy.* July 26, 1855.

NEW RELATOR IN INFORMATION ON DEATH OF ORIGINAL RELATORS.—PRACTICE.

*Upon the death of the original relators in an information after decree, the proposed new relator should apply to be substituted and for leave to carry on the proceedings, upon which, with the Attorney-General's consent, an order will be accordingly made.*

THIS was a motion, on behalf of the Attorney-General, for the appointment of a new relator in this information, upon the death of the original relators after decree.

T. H. Terrell in support.

The Vice-Chancellor said, that the proper course would be for the proposed new relator to apply to be substituted as relator, and for leave to carry on the proceedings, upon which, with the consent of the Attorney-General, an order would be made.

#### Vice-Chancellor Stuart.

*Lloyd v. The Solicitors' and General Life Assurance Society.* Aug. 1, 1855.

TAKING REPLICATION OFF FILE, WHEN NOTICE OF FILING NOT DULY GIVEN.

*A replication was filed on June 21, but notice of such filing was not served until July 25: Held, that the time for closing the evidence would be enlarged as of the day when the service took place, but a motion to take the replication off the file was refused,—no costs on either side.*

THIS was a motion to take off the file the replication in this cause, on the ground that, although filed in June 21 last, notice of such filing had not been served on the defendants' solicitor until July 25.

By the 23rd Order of October 26, 1842, it is directed, that "when any solicitor or party shall cause an appearance to be entered, or an answer, demurrer, plea, or replication to be filed, he shall on the same day give notice thereof to the solicitor of the adverse party, or to the adverse party himself if he acts in person."

Walford in support applied for costs.

W. M. James, contra.

The Vice-Chancellor said, that it was wrong to take advantage of a slip of this kind, without communicating with the other side, but that the time for closing publication would be enlarged as of the day when the service took place. No costs would be given.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—"Still attorneyed at your service."—*Shakespeare.*

SATURDAY, AUGUST 18, 1855.

### RESULTS OF THE SESSION.

#### ALTERATIONS OF THE LAW.

ACCORDING to our annual custom, we proceed briefly to sum up the result of the deliberations of both Houses of Parliament in regard to the amendment or alteration of the Law in its various departments. For the present, we must limit ourselves to a classified statement of the Acts which have received the Royal Assent, and reserve our notes and annotations for future numbers. It will indeed be convenient, in the first instance, to take a general view of the statutory labours of the Session before we enter on the various details which they comprise, —bearing in mind more especially such as involve the duties our brethren have to perform in execution of the Legislative will.

The Acts of the Session may be arranged under the following heads:—1st. Those which relate to the Law of Property. 2nd. Those which concern the Administration of Justice in our Courts of Law and Equity. 3rd. The Alterations which have been made in the Mercantile or Commercial Law. 4th. The Acts relating to the Church. 5th. The Criminal Law. 6th. The Acts concerning the Public Health, Sewers, Nuisances, Metropolitan Management, &c.

#### I. LAW OF PROPERTY.

Several of the Acts in this department of the Law have been already submitted to our readers, namely, the *Protection of Purchasers* against Judgments (p. 5).

Infants Marriage Settlements (p. 198).

Commons Inclosure (pp. 32, 275).

Incumbered Estates (Ireland), (p. 276).

Income Tax (p. 20).

The Lunacy Regulation Act (p. 32), au-

VOL. L. NO. 1,432.

thorising the grant of Leases, under the direction of the Lord Chancellor, binding on those claiming in remainder.

To which we have now to add the following:—

Grants of Land for Religious Purposes Act;

West India Loan Act;

Exemption from the Income Tax of Insurances on Lives.

It will be observed that these Statutes do not effect any material change in our Conveyancing System. Lord St. Leonards' Purchasers' Protection Act, the Lord Chancellor's Lunacy Act, and Mr. Malins' Infants' Marriage Settlement Act, are those which chiefly call for the attention of the legal practitioner.

#### II. COURTS OF LAW AND EQUITY.

The Act for the Despatch of Business in Chancery has passed with but little alteration in the Bill as first introduced by the Lord Chancellor. The Report Office is to be abolished, and the business transferred to the Record and Writ Office—a judicious and convenient measure. The Affidavit Office had previously been consolidated with the Record Office. Authority is given to increase the number of Junior Clerks in the Chambers of the Equity Judges. The Chief Clerks,—whose duties are very important and onerous, and admirably discharged,—are to receive an increase of 500*l.* a year, making the salary 1,500*l.* each. The clause for restricting the Administration of Oaths by London Commissioners in Chancery, has been expunged, and any possible doubt removed regarding the legality of their jurisdiction.

The Bills of Exchange and Promissory Notes Act (see p. 256) comprises an altera-



tion both of the Law and Practice of the Court, and belongs as well to the head of Mercantile or Commercial Law as to the department of Procedure. From the 24th October next, no defence can be made to an action brought under the provisions of the Act on a bill or note without leave of a Judge. One writ may be issued against all or any of the parties to a bill.

The Common Law Pleadings Act (p. 176) authorises the Judges to make further alterations in the Pleadings in Actions. Their power would have expired with the present Session : it is extended for five years.

The Stannary Court Act (pp. 214, 236) regulates the Practice and extends the Jurisdiction of the Court.

The County Palatine Trials Act (p. 241) authorises the Trial of Causes in Lancashire in the same manner as in other counties.

The Cinque Ports Act (p. 258) abolishes the peculiar Jurisdiction of those places and transfers it to the general Jurisdiction possessed by the rest of the county of Kent.

These measures appear to be calculated to render uniform the Administration of Justice, and to put an end to the inconvenience of separate and distinct modes of procedure in the same county.

The Crown Suits Act justly places the Government who sue or defend in the Queen's name on the same footing in Revenue Cases as her Majesty's subjects,—recovering costs where successful, and paying them when unsuccessful.

The Ecclesiastical Courts Act (p. 176) abolishes the Jurisdiction in cases of Defamation, which had fallen into disuse and the punishment for which was unseemly and inefficacious.

The Colonial Judicature Act applies to the Courts of the Prince of Wales' Island, Singapore, and Malacca, and regulates the Appointment of, and Salaries and Pensions to be paid to, the Judges.

The Act for the Administration of Oaths Abroad (p. 175) enables Ambassadors and other British Ministers abroad to administer Oaths, and renders the Affidavits admissible in all the Courts of the United Kingdom, without proof of the seal or signature.

The Charitable Trusts' Act extends the powers of the Commissioners, subject to an appeal to the Court of Chancery.

### III. MERCANTILE OR COMMERCIAL LAW.

The most important Act in this branch of the Law is that which extends the principle of Limited Liability Partnerships, already established in Joint Stock Companies formed under the existing Statutes, to any

company having a capital divided in shares of not less than 10*l.* each, held by not less than 25 persons, who have paid 20*l.* per cent. on their shares, and the deed of partnership being registered and the name of the company being announced at its place of business as limited, and so designated on all documents used in carrying on the business. This measure has received the honour of a special notice in the Queen's speech on proroguing Parliament.

The "Summary Diligence" Act on Bills of Exchange and Promissory Notes, may also be classed as an important amendment in the Commercial Law, by which frivolous and fraudulent defences on dishonoured Bills and Notes will be prevented. The mode of proceeding belongs to the department of the Courts of Law, and does not transfer the business of enforcing payment of dishonoured bills to the Notary's Office, instead of the Attorney; but leaves the latter to conduct all the proceedings.

The Bills of Lading Act amends a defect in the previous state of the law, vesting the right of suit and otherwise in the consignee or indorsee named in the Bill of Lading, as if the contract for the carriage had been made with himself. Other amendments are also made.

The Merchant Shipping Amendment Act provides for Colonial Lighthouses, the Registry of Ships, the relief of Destitute Seamen, and legal procedure for Offences on board Ship.

The Passengers by Sea Act establishes several important regulations for securing the sufficiency of the vessels and the safety and well-being of the passengers.

### IV. THE CHURCH.

The Acts on this subject relate, 1st, to the Union of contiguous Benefices; 2nd, to the Registration of Places of Religious Worship (see p. 276).

### V. THE CRIMINAL LAW.

Under the Criminal Justice Act, it is provided that in cases of Larceny where the property is not above the value of 20*s.*, a summary conviction may take place, unless the accused demands a trial.

The Youthful Offenders' Act directs the mode of proceeding where the accused are under the age of 16, and provides for their maintenance in Reformatory schools.

### VI. METROPOLITAN AND OTHER ACTS AFFECTING THE PUBLIC.

Several important Acts have also passed for the Regulation of the Metropolis and its

Buildings, and otherwise promoting the public welfare. They are as follow:—

Metropolitan Buildings,—for the amendment of several defects in this branch of the Law.

Metropolitan Local Management, — by which the several Parishes or Unions of Parishes will have their powers defined and the right of sending a representative to the General Board of Management relating to sewerage, drainage, paving, cleansing, lighting, and other improvements.

The Public Health Act is continued, and another Act passed for the more effectual removal of nuisances. The Law of Sewers is also amended in regard to House Drainage (see p. 139.)

Next may be mentioned an amended Act regulating Weights and Measures.

The Friendly Societies' Act (p. 296) amends some defects in this branch of former legislation, and thereby encourages the poorer classes to avail themselves of the advantages of these institutions, which are noticed in her Majesty's Speech.

We may close the list by the Act which abolishes the Stamp on Newspapers and provides for their transmission by Post. Authority is also given for the transmission of printed Books and Papers at the moderate postage of one penny for each four ounces.

There are also some Acts relating to the Law of Scotland, viz., the Intestacy Act, c. 23; Affirmations in lieu of Oaths, c. 25; and the Registration of Births, &c., c. 29.

## PROROGATION OF PARLIAMENT.

THE prorogation of Parliament took place on Tuesday the 14th August, by the Royal Commissioners, viz., the Lord Chancellor, the Duke of Argyll, Earl Granville, Lord Stanley of Alderley, and the Earl of Harrowby.

The following is an extract from the Queen's Speech relating to the Law Bills, which had received the Royal assent.

"Her Majesty, in giving her assent to the Bill which you presented to her for the *Local Management of the Metropolis*, trusts that the arrangements provided by that measure will lead to many improvements conducive to the convenience and health of this great city. The abolition of the *Duty on Newspapers* will tend to diffuse useful information among the poorer classes of her Majesty's subjects. The principle of *Limited Liability* which you have judiciously

applied to Joint-Stock Associations, will afford additional facilities for the employment of capital, and the improvements which you have made in the Laws which regulate *Friendly Societies* will encourage habits of industry and thrift among the labouring classes of the community."

The Parliament was prorogued to Tuesday, the 23rd October.

## ROYAL ASSENTS.

THE following Bills received the Royal Assent on the 14th August, 1855.

Office of Speaker.  
Customs Law Consolidation.  
Religious Worship.  
Youthful Offenders (No. 2).  
Crown Suits.  
Merchant Shipping Act Amendment.  
Turnpike Trusts Arrangements.  
Lunatic Asylums and Regulation Acts Amendment.  
Court of Judicature (Prince of Wales' Island).  
Bills of Lading (No. 2).  
Sale of Beer (&c.).  
Passengers Act Amendment.  
Metropolis Local Management.  
Nuisances Removal and Diseases Prevention Acts Consolidation and Amendment.  
Metropolitan Buildings.  
Despatch of Business (Court of Chancery).  
Charitable Trusts.  
Criminal Justice.  
Public Health Act (1854) Continuance and Amendment.  
Diseases Prevention.  
Public Health (No. 2).  
Burials.  
Limited Liability.  
Union of Contiguous Benefices.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages:—

Purchasers' Protection, 18 Vict. c. 15,—p. 5.  
Lunacy Regulation Act, c. 13,—p. 32.  
Commons' Inclosure, c. 14,—p. 32.  
Newspaper Stamp Duties, c. 27,—p. 137.  
Sewers (House Drainage), c. 30,—p. 139.  
House of Commons' Proceedings, c. 33,—p. 139.  
Income Tax, c. 20,—p. 197.  
Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.  
Administration of Oaths Abroad, 18 & 19 Vict. c. 42,—p. 175.  
Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.

Common Law Pleadings, c. 36,—p. 176.  
 Infants' Marriage Settlements, c. 33,—p. 198.  
 Palatine of Lancaster Trials, c. 45,—p. 241.  
 Bills of Exchange and Promissory Notes,  
 c. 67,—p. 256.  
 Cinque Ports, c. 48,—p. 258.  
 Commons Inclosure (No. 2), c. 61,—p. 275.  
 Incumbered Estates Acts (Ireland) Continu-  
 ance, c. 73,—p. 276.  
 Places of Religious Worship Registration, c.  
 81,—p. 276.  
 Friendly Societies, c. 63,—p. 296.

#### FRIENDLY SOCIETIES.

18 & 19 VICT. C. 63.

Acts or parts of Acts set forth in first  
 Schedule repealed; s. 1.

Societies under former Acts to continue;  
 s. 2.

Their rules to continue in force and en-  
 rolments to be sent to registrar; s. 3.

All their contracts, and all bonds, &c., to  
 them, to continue in force; s. 4.

Their exemptions, powers, and privileges  
 under this Act; s. 5.

Registrars how and by whom appointed;  
 s. 6.

Their salaries; s. 7.

Their expenses of office, &c.; s. 8.

Societies, how and for what purpose  
 formed. For payments on death. For  
 relief in sickness, &c. For other purpose  
 authorised by Secretary of State, &c.; s.  
 9.

No money to be paid on the death of a  
 child without a copy of entry of the regis-  
 trar of deaths; s. 10.

Benevolent societies in what case entitled  
 to the benefits of this Act; s. 11.

Statutes as to unlawful Oaths not to ex-  
 tend to societies under this Act or any re-  
 pealed Acts; s. 12.

Societies, how dissolved; s. 13.

Societies may unite with others, or one  
 society may transfer its engagements to an-  
 other; s. 14.

Minors may be elected as members; s.  
 15.

Buildings for the purpose may be pur-  
 chased or leased; s. 16.

Trustees, how appointed; s. 17.

Property of the society vested in them;  
 s. 18.

Actions, &c., by or against them; s. 19.

Limitation of his responsibility; s. 20.

Treasurer to give security; s. 21.

Treasurer to account; s. 22.

Property how recovered, if the officer die  
 or become bankrupt or insolvent; s. 23.

Punishment of fraud in withholding  
 money, &c.; s. 24.

Rules to be made; s. 25.

Copies to be sent to the registrar and his  
 certificate obtained. Actuary's certificate  
 to be sent with the copies in case of tables  
 of annuities; s. 26.

Rules may be altered, amended, rescind-  
 ed, or new rules made; s. 27.

When place of meeting is altered, notice  
 to be sent to registrar; s. 28.

Circulating false copies of rules, &c., a  
 misdemeanour; s. 29.

Rules, how received in evidence; s. 30.

On death of member, sum under 50*l*.  
 may be paid without administration. In-  
 demnity to trustees; s. 31.

Funds, how invested; s. 32.

Funds may be invested with the Com-  
 missioners of the National Debt; s. 33.

What interest old societies shall have;  
 s. 34.

Re-depositing of money withdrawn; s. 35.

Transfer of stock; s. 36.

Power of attorney, &c., not liable to  
 stamp duty. Limitation of exemptions to  
 societies not assuring above 200*l*.; s. 37.

No member to receive more than 200*l*.  
 or 30*l*. a year from any number of Societies;  
 s. 38.

Trustees may subscribe to a hospital or  
 provident institution; s. 39.

As to the determination of disputes ac-  
 cording to the rules; s. 40.

In what cases by the County Court; s.  
 41.

Order of County Court, how enforced;  
 s. 42.

Lord Chancellor may make orders for  
 regulating the proceedings in this respect;  
 s. 43.

In the case of societies whose rules are  
 not certified, disputes between the society  
 and its own members to be settled as in  
 cases of certified societies; s. 44.

Returns to the registrar, when and how  
 to be made; s. 45.

Certain societies established for granting  
 annual payments to nominees before the  
 year 1850 to have privileges of this Act;  
 s. 46.

Extra contribution may be demanded of  
 a member serving in the militia; s. 47.

Act to apply to societies constituted under  
 the Industrial and Provident Societies Act,  
 1852; s. 48.

Interpretation of "Society;" s. 49.

Extension of Act; s. 50.

Commencement of Act; s. 51.

The following are the Title and Sections  
 of the Act:—

An Act to consolidate and amend the Law relating to Friendly Societies.

[23rd July, 1855.]

Whereas it would conduce to the improvement of the Law relating to Friendly Societies if the several Statutes relating thereto were consolidated, and certain additions and alterations were made therein: Be it enacted:

1. That there shall be hereby repealed the several Acts or parts of Acts set forth in the first Schedule hereto, save and except as to any offences committed, or penalties or liabilities incurred, or bond or security given, or proceedings taken, under the same, before the commencement of this Act.

2. Provided nevertheless, That, notwithstanding the repeal of the said several Statutes, every Friendly Society now subsisting, which heretofore had been formed and established under the said Acts or any of them, shall still be deemed to be and shall continue to be a subsisting society, as fully as if this Act had not been made, unless and until such society shall be dissolved, or united with some other society as hereinafter mentioned.

3. Provided also, That the rules of every such subsisting society hitherto formed and established, which have been hitherto confirmed, registered, or certified under the said Acts or any of them, shall be deemed valid and in force until the same shall be altered or rescinded as hereinafter mentioned; and all transcripts of any of such rules which are now filed with the rolls of the sessions of the peace of any county, riding or division, city, or borough, liberty or place, shall be taken off the file, and shall be transmitted, on or before the 1st day of November, 1855, to the registrar under this Act, to be by him kept in such manner as shall be directed from time to time by one of her Majesty's Secretaries of State in that behalf.

4. Provided also, That all contracts and engagements by or with any of the said societies now valid and in force, and all bonds and securities heretofore given by any trustee, treasurer, or other officer of any such society, shall continue and be valid and in force notwithstanding the repeal of the said Acts.

5. All such subsisting societies, whose rules have heretofore been confirmed, registered, or certified under the said Acts or any of them, shall, so long as they shall not hereafter effect an assurance to any member thereof, or other person, of any sum exceeding 200*l.*, or of any annuity exceeding 30*l.* per annum, enjoy all the exemptions and privileges by this Act conferred on societies to be established under the provisions of this Act, as fully as if they had been registered and certified under this Act as hereinafter mentioned.

6. For the purposes of this Act, there shall be three registrars of friendly societies, one for England, one for Scotland, and one for Ireland, who shall hold their respective offices during the pleasure of the Commissioners for the Reduction of the National Debt; and upon the death, resignation, or removal of any one

of them, the said Commissioners shall appoint another, being a barrister in England or Ireland, and in Scotland an Advocate, of not less than seven years standing, to the said office.

7. It shall be lawful for the Commissioners of her Majesty's Treasury to pay to the present registrar for England a salary equal to that which has been paid to him yearly in each of the three last years, not exceeding 1,000*l.* per annum, and to pay to any registrar hereafter to be appointed for England a salary not exceeding 800*l.* a year, and to pay to the registrars for Scotland and Ireland respectively a salary such as the said Commissioners shall direct not exceeding 150*l.* a year, every such salary to be paid by four equal quarterly payments; and any of the said registrars who shall be appointed, or who shall die, resign, or be removed from his office, in the interval between two quarterly days of payment, shall be entitled to a proportionate part of his salary, and such salaries and proportionate parts of salaries shall be paid out of such moneys as shall be provided by Parliament for that purpose.

8. The said Commissioners of her Majesty's Treasury shall, out of such moneys as may be provided by Parliament for the purpose, pay to the said registrars respectively such sum as will defray the expenses allowed by the said Commissioners from time to time for office rent, salaries of clerks, stationery, computation of tables, and for such other expenses as may be incurred by them respectively.

9. It shall be lawful for any number of persons to form and establish a friendly society, under the provisions of this Act, for the purpose of raising by voluntary subscriptions of the members thereof, with or without the aid of donations, a fund for any of the following objects; (that is to say,)

1. For insuring a sum of money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the wife or child of a member:
2. For the relief or maintenance of the members, their husbands, wives, children, brothers or sisters, nephews or nieces, in old age, sickness, or widowhood, or the endowment of members or nominees of members at any age:
3. For any purpose which shall be authorised by one of her Majesty's Principal Secretaries of State, or in Scotland by the Lord Advocate, as a purpose to which the powers and facilities of this Act ought to be extended:

Provided, that no member shall subscribe or contract for an annuity exceeding 30*l.* per annum, or a sum payable on death, or any other contingency, exceeding 200*l.*:

And if such persons so intending to form and establish such society shall transmit rules for the government, guidance, and regulation of the same, to the registrar aforesaid, and shall obtain his certificate that the same are in conformity with law as hereinafter mentioned,

then the said society shall be deemed to be fully formed and established from the date of the said certificate.

10. In any society in which a sum of money may be insured payable on the death of a child under ten years of age, it shall not be lawful to pay any sum for the funeral expenses of such child, except upon production of a copy of the entry in the register of deaths, signed by the registrar of the district in which the child shall have died; and if such entry shall not state that the cause of death has been certified by a qualified medical practitioner, or by a coroner, a certificate signed by a qualified medical practitioner, stating the probable cause of death, shall be required, and it shall not be lawful in that case to pay any sum without such certificate; and no trustee or officer of any society, upon an insurance of a sum payable for the funeral expenses of any such child, made after the passing of this Act, shall knowingly pay a sum which shall raise the whole amount receivable from one or more than one society for the funeral expenses of a child under the age of five years to a sum exceeding 6*l.*, or of a child between five and ten years to a sum exceeding 10*l.*; and any such trustee or officer who shall make any such payment otherwise than as aforesaid, or who shall pay any sum without endorsing the amount which he shall pay on the back or at the foot of the copy of entry signed by the said registrar, shall be liable to a penalty not exceeding 5*l.* for every such offence, upon conviction thereof before two justices of the county or borough in which such death shall have taken place: The said registrar shall be entitled to receive, upon delivery of such copy of entry, for the purpose of receiving money from a friendly society, a fee of 1*s.*, and it shall not be lawful for him to deliver more than one such copy for such purpose, except by the order of a justice of the peace.

11. And whereas many provident, benevolent, and charitable institutions and societies are formed and may be formed for the purpose of relieving the physical wants and necessities of persons, in poor circumstances, or for improving the dwellings of the labouring classes, or for granting pensions, or for providing habitations for the members or other persons elected by them, and it is expedient to afford protection to the funds thereof: Be it enacted, That if two copies of the rules of any such institution or society, and from time to time the like copies of any alterations or amendments made in the same, signed by three members and the secretary thereof, shall be transmitted to the registrar aforesaid, such registrar shall, if he shall find that the same are not repugnant to law, give a certificate to that effect; and thereupon the following sections of this Act, that is to say, the 17th, 18th, 19th, 20th, 21st, and 22nd, 40th, 41st, 42nd, and 43rd, shall extend and be applicable to the said institution and society, as fully as if the same were a society established under this Act.

12. The Act of the 39 Geo. 3, c. 79, and the

Act of the 57 Geo. 3, c. 19, and also the Act of the 14 & 15 Vict. c. 48, relating to unlawful oaths in Ireland, shall not extend to any society established under this Act or any of the Acts hereby repealed, or to any meeting of the members or officers thereof in which society or at which meeting no business whatever is transacted other than that which directly and immediately relates to the objects of the society as declared in the rules thereof, and set forth in the certified copy thereof: Provided, that the trustees or other officers of the society, when required under the hands of two of her Majesty's justices of the peace, shall give full information to such justices of the nature, objects, proceedings, and practices of such society, and in default thereof the provisions of the Acts herein recited shall be in force in respect of such society.

13. It shall be lawful for the members of any society heretofore formed and established, or hereafter to be formed and established at some meeting thereof to be specially called in that behalf, to dissolve or determine the same by consent: Provided that no society established under this or any Act relating to friendly societies shall be dissolved or determined without obtaining the votes of consent of five-sixths in value of the then existing members thereof, including the honorary members, if any, to be ascertained in manner hereinafter mentioned, nor without the consent of all persons, if any, then receiving or then entitled to receive any relief, annuity, or other benefit from the funds thereof, to be testified under their hands individually and respectively, unless the claim of every such person be first duly satisfied, or adequate provision made for satisfying such claim; and for the purpose of ascertaining the votes of such five-sixths in value of the numbers as aforesaid, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member, but no one member shall have more than five votes in the whole; and the intended appropriation or division of the funds or other property shall be fairly and distinctly stated in the agreement for dissolution prior to such consent being given; and the agreement for such dissolution, duly signed as aforesaid, accompanied with a statutory declaration by one of the trustees, or by three members and the secretary, taken before a justice of the peace, that the provisions of this Act have been complied with, shall be forthwith transmitted to the registrar, to be by him deposited with the rules of the society, and such agreement shall thereupon be an effectual discharge at law and in equity to the trustees, treasurers, and other officers of such society, and shall operate as a release from all the members of the society to such trustees, treasurers, and other officers; and it shall not be lawful in any society to direct a division or appropriation of any part of the stock thereof, except for the purposes of carrying into effect the general interests and objects declared in the rules as originally certified, unless the

claim of every member is first duly satisfied, or adequate provision be made for satisfying such claims; and in case any member of such society shall be dissatisfied with such provision, it shall be lawful for him or her to apply to the Judge of the County Court of the district within which the usual place of business of the society is situated for relief or other order; and the said Judge shall have the same powers to entertain such application, and to make such order or direction in relation thereto, as he may think the justice of the case may require, as hereinafter is enacted in regard to the settlement of disputes; and in the event of the dissolution or determination of any society, or the division or appropriation of the funds thereof, except in the way hereinbefore provided, any trustee or other officer or person aiding or abetting therein shall, on conviction thereof by two justices, be committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding three calendar months, as to such justices shall seem meet.

14. It shall be lawful for any two or more societies established under this or any of the Acts hereby repealed to unite and become incorporated in one society, with or without any dissolution or division of the funds of such societies or either of them; or a society formed and established under this Act or any of the said repealed Acts may be allowed to transfer its engagements to any other friendly society, if any other such society shall undertake to fulfil the engagements of such society, upon such terms as shall be agreed upon by the major part of the trustees, and also of the committee of management of both societies, or the majority of the members of each of such societies at a general meeting convened for the purpose.

15. A person under the age of 21 may be elected or admitted as a member of any society established under this Act or any of the Acts hereby repealed, the rules of which do not prohibit such election, and may and he is hereby empowered to execute all necessary instruments and to give all necessary acquittances: Provided always, that during his nonage he shall not be competent to hold any office of director, trustee, treasurer, or manager of such society.

16. It shall be lawful for the trustee or trustees for the time being of any friendly society formed and established under this Act or under any of the Acts hereby repealed, with the consent of a majority of the members thereof present at a special or general meeting of the society, to purchase, build, hire, or take upon lease any building for the purpose of holding such meetings, and to adapt and furnish the same, and to purchase or hold upon lease any land not exceeding one acre for the said purpose of erecting thereon a building for holding the meetings of the society, and such trustee or trustees shall thereupon hold the same in trust for the use of such society; and, with the like consent as aforesaid, such trustee or

trustees may mortgage, sell, exchange, or let such building or any part thereof; and the receipt in writing of such trustee, or one of such trustees for the time being, shall be a legal discharge for the money arising from such mortgage, sale, exchange, or letting; and no mortgagee, purchaser, tenant, or assignee shall be bound to inquire into or ascertain or prove the consent aforesaid, to verify his title: Provided always, that any building purchased or appropriated for the purpose aforesaid already belonging to or in the possession of any friendly society heretofore formed and established under the said repealed Acts or any of them may be holden and dealt with as if it had been acquired under this Act; and the land or buildings which may be vested in the treasurer, trustee, or other officer thereof for the time being shall thereupon vest in the trustee or trustees for the time being of such society, for the same estate and interest as the said treasurer, trustee, or other officer may have therein, without any conveyance or assignment whatever: Provided nevertheless, that all money spent in purchasing, building, hiring, or taking upon lease any building for the purpose of holding such meetings, and in adapting and furnishing the same, be raised according to the rules of the society on such behalf inserted; and this section shall apply to any society registered under the Industrial and Provident Societies' Act, 1852, and to any building or land to be purchased, built, hired, or taken on lease for the purposes of the labour, trade, or handicraft of such society, in all respects as hereby enacted with regard to any building or land for the holding the meetings of any friendly society.

17. Every friendly society established under this Act shall, at some meeting of its members, and by a resolution of a majority of the members then present, nominate and appoint one or more person or persons to be trustee or trustees for the said society, and the like in the case of any vacancy in the said office; and a copy of the resolution so appointing such person or persons to the office of trustee, and signed by such trustee or trustees and by the secretary of the said society, shall be sent to the registrar, to be by him deposited with the rules of the said society in his custody: Provided always, that where no trustee shall have been appointed in any society established under any one of the Acts hereby repealed, the treasurer thereof, or other person who has custody of the moneys of such society, shall be taken to be a trustee, within the meaning of this Act.

18. All real and personal estate whatsoever belonging to any such society established under this Act or any of the Acts hereby repealed shall be vested in such trustee or trustees for the time being, for the use and benefit of such society and the members thereof, and the real or personal estate of any branch of a society shall be vested in the trustees of such branch, and be under the control of such trustee or trustees, their respective executors or admini-

strators, according to their respective claims and interest, and upon the death or removal of any such trustee or trustees the same shall vest in the succeeding trustee or trustees for the same estate and interest as the former trustee or trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the name or names of such new trustee or trustees; and in all actions or suits or indictments, or summary proceedings before magistrates, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in his or their proper name or names, as trustees of such society, without any further description.

19. The trustee or trustees of any such society are hereby authorised to bring or defend, or cause to be brought or defended, any action, suit, or prosecution in any Court of Law or Equity, touching or concerning the property, right, or claim to property of the society for which he or they are such trustee or trustees as aforesaid; and such trustee or trustees shall and may, in all cases concerning the real or personal property of such society, sue and be sued, plead and be impleaded, in any Court of Law or Equity, in his or their proper name or names, as trustee or trustees of such society, without other description; and no such action, suit, or prosecution shall be discontinued or shall abate by the death of such person, or his removal from the office of trustee, but the same shall and may be proceeded in by or against the succeeding trustee or trustees as if such death or removal had not taken place; and such succeeding trustee or trustees shall pay or receive the like costs as if the action or suit or prosecution had been commenced in his or their name or names, for the benefit of or to be reimbursed from the funds of such society.

20. Provided nevertheless, That no trustee or trustees of any such society shall be liable to make good any deficiency which may arise or happen in the funds of such society, but shall be liable only for the moneys which shall be actually received by him on account of such society.

21. The treasurer of every such society, and every treasurer hereafter appointed in any society established under any of the repealed Acts, or any other officer who is required by the rules to give security, shall, before he take upon himself the execution of his office, become bound, with one sufficient surety, in a bond according to the form set forth in the third Schedule to this Act, or give the security of a guarantee society established in London, in such penal sum as the society or the committee of management shall direct and appoint, conditioned for his just and faithful execution of his said office of treasurer, and for rendering a just and true account of all moneys received or paid by him on account of the said society

at such times as the rules of the said society shall direct and appoint, and at such times as he shall be required so to do by the trustee or trustees of the said society, or by a majority of the said committee of management, or by a majority of the members present at any meeting of such society; and every such bond shall be given to the trustee or trustees of the said society for the time being; and if the same shall at any time become forfeited, it shall be lawful for such trustee or trustees for the time being to sue upon such bond for the use of such society; and in Scotland such bond shall have the same force and effect as a bond there in use duly attested and completed, and containing a clause of registration for execution as well as for preservation in the books of council and session and other Judges' books competent, and shall be registered in such books accordingly, with a view to diligence.

22. Every such treasurer or other officer, whether appointed before or after the passing of this Act, at such times as by the rules of such society he should render such account as aforesaid, or upon being required so to do by the trustee or trustees of such society, or by a majority of the said committee of management, or by a majority of the members present at a meeting of the said society as aforesaid, within seven days after such requisition shall render to the trustee or trustees of the society, or to the said committee of management, or to the members of such society, at a meeting of the society, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such society, which account the said trustee or trustees or committee of management shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustee or trustees the balance which on such audit shall appear to be due from him, and shall also, if required, hand over to such trustee or trustees all securities and effects, books, papers, and property of the said society in his hands or custody; and if he fail to do so the trustee or trustees of the said society may sue upon the bond aforesaid, or may sue such treasurer in the County Court of the district, or in any of the Superior Courts of Common Law, or in any other Court having jurisdiction, for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said society, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said society; and in such action the said trustee or trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

23. If any person already appointed or employed or hereafter to be appointed or employ-

ed to or in any office in any friendly society established under this Act or under any of the Acts hereby repealed, whether such appointment or employment was before or after the legal establishment of such society, and having in his hands or possession, by virtue of his office, any moneys or property whatsoever of such society, or any deeds or securities belonging to such society, shall die, or become bankrupt or insolvent, or have any execution or attachment or other process issued against him or any part of his property, or shall have any action or diligence raised against his lands, goods, chattels, or effects, or property or other estate, heritable or moveable, or shall make any assignment, disposition, assignation, or other conveyance for the benefit of his creditors, the heirs, executors, administrators, or assignees of every such officer, and every other person having or claiming right to the property of such officer, and the sheriff or other person executing such process, and the party using such action or diligence respectively, shall, upon demand in writing made by the treasurer or by the trustee or any two of the trustees of such society, or any person appointed at some meeting of the society to make such demand, deliver and pay over all such moneys, property, deeds, and securities belonging to such society to such persons as such treasurer or trustees shall appoint, and shall pay, out of the estate, assets, or effects, heritable or moveable, of such officer, all sums of money due which such officer shall have received, before any other of his debts are paid, and before any other claims upon him shall be satisfied, and before the money directed to be levied by such process as aforesaid, or which may be recovered or recoverable under such diligence, is paid over to the party issuing such process or using such diligence; and all such assets, lands, goods, chattels, property, estates, and effects shall be bound to the payment, discharge, and satisfaction of such claims.

24. If any officer, member, or other person, being or representing himself to be a member of such society, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition, shall obtain possession of any moneys, securities, books, papers, or other effects of such society, or having the same in his possession shall withhold or misapply the same, or shall wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such society, or any part thereof, it shall be lawful in England for any justice of the peace acting in the county or borough in which the place of business of such society shall be situated, upon complaint made by any person on behalf of such society, to summon the person against whom such complaint is made to appear at a time and place to be named in such summons; and any two justices present at the time and place mentioned in such summons shall proceed to hear and determine the said complaint, in manner directed by the Act passed in the 11 & 12 Viet.

c. 43; and in Scotland every such offence may be prosecuted by summary complaint at the instance of the procurator fiscal of the county, or of the society, with his concurrence, before the sheriff; and if the said justices or sheriffs respectively shall determine the said complaint to be proved against such person, they shall adjudge and order him to deliver up all such moneys, securities, books, papers, or other effects to the society, or to repay the amount of money applied improperly, and to pay, if they think fit, a further sum of money not exceeding 20*l.*, together with costs not exceeding 20*s.*; and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs as aforesaid, the said justices or sheriffs may order the said person so convicted to be imprisoned in the common gaol or house of correction, with or without hard labour, for any time not exceeding three months: Provided, that nothing herein contained shall prevent the said society, or in Scotland her Majesty's Advocate, from proceeding by indictment against the said party; Provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

[To be continued.]

## STATUTE LAW COMMISSION.

### EXTRACTS FROM THE MINUTES OF PROCEEDINGS OF THE COMMISSIONERS.

November 13, 1854.

READ a note from the Lord Chancellor:—

After some general discussion as to the proper method of preparing consolidated Statutes, with regard to the incorporation of the Common Law, the preservation of the exact terms of the existing Statutes, and the extent to which amendments of the law might properly be introduced, it was agreed that the detailed consideration of the subjects mentioned in the printed circular and in the Lord Chancellor's note, should be postponed until his lordship could be present.

November 15, 1854.

The members present agreed to divide into sub-committees, each of which should undertake to superintend the consolidation of a particular branch of the Statute Law.

The Chief Justice of the Common Pleas and Mr. Baron Parke agreed to take the Criminal Law; Messrs. Greaves and Lonsdale to be employed to remodel the Criminal Law Bills of last Session.

Sir W. P. Wood; Mr. Walpole, and Mr. Ker, agreed to take Real Property.

The Lord Chief Justice and the Chief Baron agreed to take the superintendence of Mr. Roger's Consolidated Bill on the Law of Masters and Workmen, now in course of preparation, as mentioned in the printed circular.



The Lord Chancellor and Lord Wrottesley took the subject of Charities.

The Attorney-General took the subject of Insurance.

Each sub-committee to select one or more draftsmen, to draw such Bills as they may think expedient, subject to the approbation of the Board.

Mr. Ker to be a member of all the sub-committees, for the purpose of superintending the communications with draftsmen, &c.

It was resolved by the Board, that no permanent sub-commissioners should be appointed at present, but that the assistance of draftsmen should be obtained by means of fees.

The secretary to communicate this resolution to Mr. T. C. Anstey and Mr. Warrington Rogers.

A Bill for consolidating the Acts relating to the National Debt, with an explanatory paper by Mr. Anstey, was laid before the Board by the secretary, and was referred to the Lord Chancellor and Mr. Ker.

The Board confirmed the provisional employment of Mr. Anstey and Mr. Rogers by the Lord Chancellor, as mentioned in the printed circular. The secretary to communicate this to Messrs. Anstey and Rogers.

Mr. Walpole having suggested that some general rules should be agreed on, as to the form and style of the Bills to be drawn under the sanction of the Board, in order to ensure uniformity.

Mr. Ker stated that a paper on that subject had been already prepared by the secretary; and undertook to revise it, in conjunction with the secretary, and to submit it for the consideration of the Board at the next meeting.

November 29, 1854.

A letter from the Copyhold Commissioners was read, proposing "to repeal the existing Statutes relating to the enfranchisement of copyholds and to prepare a consolidated measure embracing such amendments as they have found necessary in dealing with cases under these Acts."

It was resolved that this Board would undertake to superintend the drawing of the Bill, it being understood that the necessary funds would be provided by the Copyhold Commissioners.

A communication addressed to the Secretary by Mr. Napier, with reference to the Statute Law of Ireland, was laid before the Board, from which the following is selected as applicable to the general subject of consolidation:—

"There are some subjects which might very usefully engage an early attention; for instance, the Stamp Laws, the Law of Judgments, &c., &c."

"I think it is a very prudent course to take up such groups of Statutes as overlay the law on these every-day matters, and construct a new and complete code, *repealing at the same time all the old Statutes.*

"This may best be accomplished by employing gentlemen of acknowledged ability, con-

versant with the particular subject, and afterwards submitting the drafts to the consideration and criticism of practical as well as professional men.

"I may perhaps observe, that for some time I have been of opinion that we ought to have a department of Justice, and an official staff, to carry forward and keep up a system of sound Law Reform.

"It has been delayed so long that the public have become impatient of the vexatious, dilatory, and expensive procedure under which complicated laws have been administered, and reforms have been rudely demanded and carelessly flung to meet the occasion, so as in my opinion to endanger our judicial system altogether.

"From the small experience which I have had, I would say that our Statute Law might be reduced into a satisfactory state by gradual consolidation, and that the most prudent course would be to divide the labour, by employing such men as could deal most promptly and efficiently with particular heads of the law to which they had specially given their attention.

"And as to future legislation, I candidly own, that unless it can be brought into harmony with the standard for amending the past, the labours of the Commission must be frustrated.

"Every Bill should, in my opinion, be submitted to the careful supervision of a responsible department of administration, and a proper staff for effectuating the objects of such department should be provided.

"To this department suggestions for amendments could be sent when the law would be found to be defective, a record of judicial constructions could be preserved, and a scientific plan and accurate phraseology of Bills secured before they should become law."

Mr. J. M. Ludlow was proposed by Sir W. P. Wood, and approved as a draftsman for the Real Property Statutes, and Mr. Ker engaged to communicate with him.

The expediency of a general consolidation of the Stamp Laws was taken into consideration, and Mr. Ker engaged to ascertain whether this would be considered expedient by the department of Stamps; and if so, to communicate with Mr. Henry Jessel, and ascertain whether he would undertake the work.

The Solicitor-General agreed to join with the Attorney-General as a sub-committee on the subject of Insurance.

It was resolved that at the next meeting the paper of suggestions as to the form and style of Consolidated Statutes (already circulated among the members) should be taken specially into consideration, in order that the sub-committees might be able to give uniform instructions to the draftsmen employed by them; and the Secretary was directed to request all members of the Board to bring or send in writing any corrections or additions to that paper which they might wish to contribute.

It was agreed that Mr. Anstey should be employed to prepare for publication a chrono-

logical list of all Statutes and parts of Statutes now repealed. Mr. Ker undertook to communicate with Mr. Anstey on the subject, and to instruct him as to the details of the work, and also to consider whether some second draftsman should not be associated with Mr. Anstey for this work; Mr. Warrington Rogers (who had prepared the existing list of repealed Statutes jointly with Mr. Anstey) having accepted the post of Solicitor-General for Van Diemen's Land.

December 13, 1854.

The Secretary laid before the Board,—

Mr. Rogers's Bill for consolidating the Laws of Masters and Workmen, already referred to the Lord Chief Justice and the Lord Chief Baron.

Mr. Wingrove Cooke's scheme for the consolidation of the Copyhold Commissioners' Act.—The consideration of this was referred to the Lord Chancellor and Mr. Ker.

Mr. Ker reported that he had ascertained from the Chairman of the Board of Inland Revenue, that a consolidation of the Stamp Laws would be favourably received and assisted by that department; and he was authorised by the Board to instruct Mr. Henry Jessel to undertake the work.

Mr. Ker also laid on the table, for the consideration of the Board, a printed memorandum as to the proposal for a Chronological List of Repealed Acts referred to him at the last meeting of the Board.

January 10, 1855.

Mr. Ker laid before the Board a scheme for a consolidation of the Law of Costs, communicated by Mr. Wingrove Cooke, but afterwards withdrew it, in consequence of the Chief Justice of the Common Pleas having stated that the subject was then under the consideration of the Common Law Commission.

The Lord Chancellor and Mr. Ker reported that they had considered Mr. Wingrove Cooke's scheme for a consolidation of the Copyhold Acts, (which was referred to them by the last Board,) and had signified their approval thereof to Mr. Cooke.

Baron Parke (through Mr. Ker) reported, that with the concurrence of the Chief Justice of the Common Pleas, he had instructed Mr. Lonsdale to proceed with a consolidation of the Statute Criminal Law.

Mr. Ker reported that he had instructed Mr. Henry Jessel to prepare a scheme for the consolidation of the Stamp Laws, as authorised by the last Board.

The Board then took into consideration the proposals for the publication of a Chronological List of Repealed Statutes, and it was resolved that the plan must be abandoned for the present.

January 24, 1855.

The instructions for draftsmen, corrected according to the direction given at the last Board, were laid before the Board and finally approved of.

A letter from Mr. Anstey was laid before the Board, containing the following suggestions of proper subjects for consolidation.

"In addition to the subjects of 'Insurance,' 'Excises,' 'Land Tax,' 'Assessed and other Taxes,' &c., &c., &c., noticed in my printed 'Minutes,' or in my correspondence with the present Board, I beg to suggest the following as proper matter for consolidation:—

"1. 'Justices of the Peace.'

"2. 'Constitution and Jurisdiction of Criminal Courts' in general.

"3. 'Gaols, Prisons, and Places of Penal Discipline or Ward.'

"4. 'Actions popular, and Penalties recoverable therein.'

"5. 'Form and Construction of Acts of Parliament.'

"6. 'Parliament and the Proceedings and Privileges thereof.'

"7. 'Parliamentary Elections and Qualifications.'

"8. 'Offences against the Law or Privileges of Parliament.'

"9. 'Ways, Bridges, and Ferries.' [Under the term 'Ways,' Highways and Turnpike Roads will be included.]

"10. 'Inland Navigation and Fisheries.'

"11. 'Bills of Exchange and Notes.'

"12. 'Copyright.'

"13. 'Husband and Wife.'

"14. 'Trading and other Companies.'

"15. 'Professions and Trades.'

"16. 'Municipalities.'"

It was agreed that Mr. Anstey should be requested to furnish a scheme for a consolidation of the Statute Law relating to "Gaols, Prisons, and Places of Penal Discipline or Ward;" and that when furnished it should be referred to a sub-committee consisting of Lord Lyndhurst, Lord Brougham, and Mr. Ker.

A proposal was laid before the Board from Mr. Warrington Rogers, for a Bill "upon the principle of Sir J. Jervis's Act, but extending to all cases of summary conviction and to all necessary proceedings before Justices," and introducing certain amendments and simplifications of the law. Agreed that the Chief Justice of the Common Pleas and Mr. Baron Parke be requested to take this proposal into their consideration.

February 7, 1855.

The Lord Chancellor reported that a Bill prepared by the Registrar-General, purporting to be a consolidation of the Marriage Acts, had been referred to him by the Secretary for the Home Office for consideration, and that he had stated in reply that he proposed to lay it before this Board. The Lord Chancellor then stated that this Bill had been examined by himself and by Mr. Ker; that it was not a consolidation of all the Acts generally termed the Marriage Acts, but only of those passed for the purpose of relieving Dissenters from the necessity of being married by banns (the 6 & 7 Wm. 4, c. 85, and subsequent amending Acts); and that the several sections of these

Acts had been merely combined into a single Act, without improved arrangement or condensation.

The Lord Chancellor did not, therefore, think it necessary to lay this Bill before the Board as a consolidation of the Law; but he stated that he should report to the Home Secretary that, regarded as a specimen of consolidation, he did not consider it advisable that the Bill should be brought in; and that if the alterations of the law which it contained were required, it would be better to introduce them by themselves in a short amending Bill. His lordship, however, suggested to the Board that the whole body of the Marriage Acts presented a good subject for consolidation.

The Chief Justice of the Common Pleas reported that he and Mr. Baron Parke had considered Mr. Rogers's proposal (referred to them at the last Board) to extend and amend the Acts called "Jervis's Acts," and that their lordships approved of the plan; but that they considered, as the original Acts had been drawn by Mr. Archbold, it was proper that the preparation of the new Bill should first be offered to that gentleman. The Secretary to apply to Mr. Archbold on the subject.

A report from Mr. Anstey on the Prisons Acts was received, and referred to the Lord Chancellor, Lord Lyndhurst, and Mr. Ker.

The Lord Chancellor explained, that in proposing the formation of this Board, he intended that Mr. Ker, in addition to his duties as the paid Commissioner, should assist the Great Seal in the House of Lords in drawing such Law Bills as should be required by the Lord Chancellor, and by generally examining and reporting to him as to all the Law Bills introduced in either House of Parliament; and his lordship added, that he thought it would be very advantageous if he were authorised by the Board to lay before them for their consideration any particular Bills which should appear from such reports either to be consolidations of the Law, or to admit of the application of any rules which the Board may devise (in the terms of the Commission) "to ensure simplicity, or uniformity, or any other improvement in the form and style of future Statutes;" which was agreed to, it being, however, understood that the Board is not to be considered responsible for any Bills except those prepared under their own direction.

[To be continued.]

## NEW PALACE AT WESTMINSTER.

### LAW COURTS.

THE Chief Commissioner of Public Works, in his Report to the Lords of the Treasury, dated 18th June, 1855, states that Sir Charles Barry's estimate of 278,285*l.* for additional works to complete the Palace, does not make any provision for the accommodation of the *Law Courts*, which would have to be removed from the vicinity of Westminster Hall, if his design for the west side of the New Palace be

executed. For the Law Court buildings adjoining Westminster Hall would have to be pulled down, and the proposed additional buildings would, according to Sir Charles Barry, not afford *one-fourth* part of the space which would be required for the adequate accommodation of the Law Courts.<sup>1</sup>

Sir Charles Barry, in his letter to the Secretary of the Commissioners of Public Works, says:—"With respect to accommodation, which, although not necessary for the transaction of the business of *Parliament*, has hitherto been provided for in the Palace at Westminster, namely, the *Law Courts*, I beg to state, for the accommodation of these Courts, at least 12 in number, on one floor, and lighted from above, together with adequate accommodation for the Judges, for Counsel, and for the Public, the space which could be appropriated for the purpose would not be more than one-fourth of that which would be requisite. The present Law Courts are *insufficient in number and size*, and some of them, which are only temporary, are placed in *upper floors*, where they are found to be extremely inconvenient. The rooms for the Judges, for the Bar, for Juries, and for the Public generally, are also *insufficient in number and size*, defective in the mode of lighting, and *ill-arranged*. In short, the want of space in the present Law Courts, and the *inconvenience of their locality* are loudly and very generally complained of."

## LAW OF ATTORNEYS AND SOLICITORS.

### ARE AGENTS' BILLS OF COSTS TAXABLE?

WE have had our attention directed by an esteemed Correspondent to the subject of the taxation of an agent's bill of costs, on the application of the country attorney. We now lay before our readers the various decisions on this important question, from the year 1746. It appears that the earlier cases in Chancery are conflicting; but on the whole, it seems that Courts of Equity have power under their inherent jurisdiction, irrespective of statutory enactment, to direct a taxation. The question in the Courts of Common Law has been ably discussed by Mr. Justice Coleridge, who twice decided against the jurisdiction, while on the other hand, Lord Chief Baron Pollock has ruled in favour of the power to direct a taxation. We give these judgments *verbatim*.

<sup>1</sup> See Parliamentary Paper, No. 333, June 21st, 1855. The whole cost of the further buildings, with the purchase of the houses on one side of Bridge Street, the removal of St. Margaret's Church to an adjoining site, and the enlargement of Old Palace Yard, will amount to 651,285*l.*, including the above sum.

The following is an abstract of the cases in the Courts of Equity :—

In *Binsted v. Barefoot*, 1 Dick. 112 (17th July, 1746), an application by one Anderson (who was concerned as agent in London for a country solicitor) was granted to discharge an order for taxing his bill of fees and disbursements, Lord *Hardwicke*, C., holding that agency business did not come within the Act of Parliament.

In *Paget v. Nicholson*, 1 Dick. 285; Beam. Costs, app. No. 11 (Dec. 22, 1755), Lord *Hardwicke*, C., directed the taxation of a bill of fees and disbursements for agency business.

In *Corner v. Hake*, 2 Cox, 173 (June 25, 1789), Lord *Thurlow*, C., granted a motion on the part of one of the solicitors in a cause to have his own agent's bill taxed, "on several precedents being mentioned for the purpose."

In *Ostle v. Christian*, 1 Turn. & Russ. 324 (Aug. 16, 1823), Lord *Eldon*, C., concurred in the opinion, that a solicitor could not obtain the taxation of his agent's bill without bringing the amount into Court.

According to the decision of Vice-Chancellor *Shadwell* in *In re Barker*, 6 Sim. 476 (August 29, 1834), a solicitor's bill of costs is taxable in equity, although it contains no charges for business done in a Court of Law or Equity, if he retains money received by him in his character of solicitor for the use of his client.

In the case of *Lees v. Nuttall*, 2 Myl. & K. 284 (Dec. 4, 1834), *Pepys*, M. R., discharged an order which had been obtained as of course for the taxation of an agent's bill, and held, that the rule could not, except under special circumstances, be dispensed with for bringing the amount of the agent's bill into Court.

In *Jones v. Roberts*, 8 Sim. 397, 7 Law J., N. S., Ch. 156 (April 28, 1837), the Vice-Chancellor of England said,—"For a series of years it has been the established practice of this Court to direct the taxation of an agent's bill, on the application of the solicitor who employed him. That practice was recognised as established by Lord *Thurlow*, in the case of *Corner v. Hake*, in 1789; and it is plain from the mode in which Lord *Eldon* treats the subject in *Ostle v. Christian*, that in his opinion it was the undoubted practice of this Court to direct the taxation of an agent's bill. If, then, I find that this practice has prevailed in this Court for a long series of years, it appears to me that I am bound to adopt and follow it, notwithstanding the opinion expressed by the Judges of the Court of Common Pleas, in *Weymouth v. Knipe*."

In *Toghill v. Grant*, *in re Boord*, 2 Beav. 261 (Jan. 13, 1840). Lord *Lampdale*, M. R., held that the Court of Chancery had authority to refer for taxation the bill of costs of a solicitor, who acts as agent for another.

The decisions at Common Law are as follow :—

In an Anonymous case, 1 Wils. 266 (Easter Term, 1750), the Court of King's Bench held,

that an agent's bill was not within the Act of Parliament, and could not be taxed; "and the Master said he never taxed a bill for agency in his life."

In *Repairs Bearcroft*, 1 Doug. 200 n. (Trin. Term, 1766). The Court of Common Pleas ordered an agent's bill to be taxed under their general authority; and Mr. Secondary *Barnes* said, he remembered that before the 2 Geo. 2, c. 23, applications were made at Judge's Chambers to refer agents' bills to be taxed, and that it was frequently done upon the country attorney's bringing the fees charged into Court.

In *Dixon v. Plant*, 1 Doug. 200 n. (Mich. Term, 1778), *Wilkes*, *Ashurst*, and *Buller*, J.J., were inclined to think that an agent's bill was not taxable by the Master, having regard to the 12 Geo. 2, c. 13, s. 6. But afterwards *Buller*, J., who sat for Lord *Mansfield*, C. J., said, that as it had been found to be the practice of the Court of Common Pleas (confirmed by a case decided in that Court), to make orders for the taxation of agents' bills, the agent's bill was referred, in order that the practice of all the Courts might be uniform: *Wilkes* and *Ashurst*, J.J., concurred.

In *Wildbore v. Bryan*, 8 Price, 677 (Dec. 14, 1820), the Court of Exchequer held, that an agent's bill could not be taxed on the application of the client of the attorney immediately employed.

In *Weymouth v. Knipe*, 3 Bing. N. C. 387; 5 Dowl. 495; 3 Scott, 764 (Nov. 25, 1837), the Court of Common Pleas (per *Tindal*, C. J., *Gaselee*, *Vaughan*, and *Bosanquet*, J.J.), held, that it possessed no jurisdiction to compel the taxation of an agency bill, either at Common Law or under the Statutes of 2 Geo. 2, c. 23, and 12 Geo. 2, c. 13, even where a suit was pending against the defendant for the recovery of the amount.

It appears from *Cardale v. Bull*, 4 Q. B. 611 (May 9, 1843), that the Court had no power under Stats. 2 Geo. 2, c. 23, and 12 Geo. 2, c. 13, by direct statutory provision, or in the exercise of any common law authority, to order taxation of an agency bill delivered by one attorney to another. (Per Lord *Denman*, C. J., and *Patteson*, *Williams*, and *Wightman*, J.J.)

In the case of *In re Simons*, 2 D. & L. 500; 14 Law J., N. S., Q. B. 41 (Mich. Term, 1844), upon a reference to arbitration of an action in the Court of Exchequer, the defendant's attorney employed an attorney at Carmarthen to attend before the arbitrator and conduct the case for the defence. He afterwards delivered a signed bill, of which one of the items was as follows: "Journey to Lampeter and tavern bill, attending and advocating four days on this reference, as per terms, including fee with the brief 12l. 12s." *Patteson*, J., said, "I have mentioned this case to several of the Judges, and they all agree with me in opinion, that such a bill as this cannot be taxed; as it is for business done by Mr. *Simons* rather as an advocate than as an attorney."

In the case of *In re Gedge*, 14 Law J., N. S., Q. B. 238; 2 D. & L. 915 (May 2, 1845),

*Coleridge, J.*, said, "The recent Act, the 6 & 7 Vict. c. 73, does not apply to agents' bills."

I entirely agree with what has been said respecting the necessity of construing that Act with reference to the state of the law at the time when it was passed; and I am satisfied that its provisions were well weighed, and made with great care.

"Now, it is said, that in the Court of Chancery agents' bills were taxable by virtue of the inherent power of the Court, without reference to any legislative enactment. With regard, therefore, to such bills, it was not necessary to introduce any special provision in the recent Act. The Courts of Common Law on the other hand, *held* that they possessed no power independent of the Statute, to order the taxation of an attorney's bill. And with respect to agency bills, it was equally clear that the express provisions of the 12 Geo. 2, c. 13, prevented the Common Law Courts from having any power over them. It was contended, however, that the Statute 2 Geo. 2, c. 23, included agents' bills; but I do not think it very material in the view I take in the present case, to consider whether it did or not.

"In order then to judge whether any alteration were intended in the law with respect to agents' bills, let us see what was done in other matters where an alteration was effected. Now, in the case of executors and others chargeable on a bill, the Act provides that the bill may be taxed on the application of the party interested in the property. So with respect to the subject-matter of the taxation; the Courts had no power to refer any other business than that done at law or in equity: and the Act expressly extends it to business not transacted in either a Court of Law or Equity.

"If, therefore, we find that where alterations are made in other matters, the Act expressly mentions them, and is silent as to any alteration with respect to agents' bills, I think the irresistible influence to be drawn from this silence is, that agents' bills were not intended to be included in the Act. Am I then to say, that because general words are used in the Act, therefore it was not necessary to introduce the word 'agent?' This view might be entitled to some weight if I were dealing with the case of parties, who might be supposed not to know the existing state of the law. But the whole force of the argument of Mr. Lush has been directed to show that an agent was a party well known at the time of the passing of the Act.

"It must, therefore, I think, be taken, that an agent's bill is not included in the Act, and is consequently left in the same state as before the Act was passed; that is, as it was untaxable before, so also is it untaxable since the passing of the Act."

In *In re Simons; Simons v. Peacock*, 3 D. & L. 156 (Trin. Vacation, 1845), the defendant, who was solicitor to the Post Office, employed the plaintiff, a country attorney, to conduct at the South Wales Assizes a prosecution for forging a post-office order. *Coleridge, J.*, *held* that the Court had no power to refer the bill for

taxation; and that the fact that the plaintiff had debited the defendant with the whole of the charges, did not the less render it a bill for agency business.

In *Billing v. Coppock*, 1 Exch. R. 14; 5 D. & L. 126; 16 Law J., N. S., Exch. 265 (May 5, 1847), *Pollock, C. B.*, said, "the case of *Weymouth v. Knipe* decided that an agent's bill was expressly excepted out of the 2 Geo. 2, c. 23, by the 12 Geo. 2, c. 13. Now, as it required a new Statute to take agency bills out of the operation of the 2 Geo. 2, c. 23, and as such bills are not excepted out of the 6 & 7 Vict. c. 73, it is evident that the intention of the Legislature was, that the 6 & 7 Vict. c. 73, should have the same effect as the 2 Geo. 2, c. 23, and include agency bills."

In *Smith v. Dimes*, 4 Exch. R. 32; 7 D. & L. 78 (June 6, 1849), *Pollock, C. B.*, said:—"All the authorities on the subject of the taxation of an agent's bill before and since the Stat. 6 & 7 Vict. c. 73, were brought to our attention. They are not uniform, even since that Statute; but we think, on considering those authorities and the language of the Statute, we have the power to refer such a bill for taxation; and, therefore, the rule must be absolute.

"This question depends entirely on the Statute Law; for, according to the more recent authorities, the Courts of Law have no jurisdiction to tax an agent's bill by their Common Law authority, even though an action had been brought upon it. This was decided in the cases of *Weymouth v. Knipe*, (3 Bing. N. C. 387; S. C. 5 Dowl. 495; 3 Scott, 764); and *Cardale v. Bull*, (4 Q. B. 611); though the Courts of Equity have held that they have the power; *Jones v. Robert*, (8 Sim. 397); and though, prior to the above decision, Courts of Law had commonly exercised it. It is also perfectly clear that the Courts of Law had not this jurisdiction according to the Statute Law as it stood at the time of the passing of the 6 & 7 Vict. c. 73. The 12 Geo. 2, c. 13, s. 6, having expressly taken all bills between attorney and attorney out of the operation of the 2 Geo. 2, c. 23, the Courts could not have the power to tax agency bills by virtue of the Stat. 2 Geo. 2. It was so held in the cases of *Weymouth v. Knipe*, and *Cardale v. Bull*, above cited.

"In the case of *In re Gedge* (2 D. & L. 915), in the year 1845, after the passing of the 6 & 7 Vict. c. 73, it was held by *Coleridge, J.*, that the new Statute did not apply to agency bills; and that learned Judge thought, that as the Act expressly changed the then existing law so as to include the case of executors, and also every description of business, yet was silent as to any change with respect to agency bills, the inference was, that such a change was not intended to take place. That decision was acquiesced in by the counsel on both sides, and acted upon by the same learned Judge in the case of *In re Simons* (3 D. & L. 156), where an action was brought by one attorney against another for business done on his retainer. In

another case, *In re Simons*, (2 D. & L. 508), where one attorney sued another for business done as an advocate before an arbitrator, Mr. Justice Patteson held, that the bill was not taxable. On the other hand, in the case of *Billing v. Coppock* (1 Exch. 14; S. C. 5 D. & L. 126), this Court decided that the bill of a London attorney, for going to Cambridge, and defending a person on a criminal charge, upon the credit and responsibility of another London attorney, was taxable under 6 & 7 Vict. c. 73. Two of the learned Judges (*Alderson, B.*, and *Platt, B.*), appear to have thought that it was not an agency bill at all; and I relied upon the case of *Weymouth v. Knipe*, and intimated my opinion that the 12 Geo. 2, c. 13, alone prevented the power of taxation, by withdrawing agency bills from the operation of the 2 Geo. 2, c. 23, and that it was the intention of the Legislature that the 6 & 7 Vict. c. 73, should have the same effect as the 2 Geo. 2, c. 23, and include them.

"These authorities are not entirely satisfactory to our minds, and are not decisive of the present question. The case in this Court may have been decided, on the ground that the bill then in question was not an agency bill at all, but a claim of one attorney against another as a client; the case before Mr. Justice Patteson was not for business done in the character of an attorney; and with respect to those before Mr. Justice Coleridge, if it was the operation of the 12 Geo. 2, c. 13, which alone deprived the Court of jurisdiction in taxing an agent's bill, which we are strongly inclined to think was the case, the reason given by that learned Judge for the decision in the first case before him is not satisfactory, because the repeal of that Statute, and no re-enactment of a similar provision does sufficiently indicate the intention of the Legislature to make a change in the jurisdiction of taxing attorneys' bills, as it existed at the time the 6 & 7 Vict. c. 73, passed, and it was unnecessary to say more.

"In this state of the authorities, which are by no means conclusive either way, we are called upon to say what is the true construction of the 6 & 7 Vict. c. 73. If under the 2 Geo. 2, c. 23, before the 12 Geo. 2, c. 13, an agent's bill could be taxed, it cannot be doubted that it could be by virtue of the 6 & 7 Vict. c. 73, which, though it repeals the former Statute, gives more extensive powers of taxation to the Court than they had under it. There are no cases, that we are aware of, between the 2 Geo. 2, c. 23, and the 12 Geo. 2, c. 13, that decide that point; and, in the absence of authority to the contrary, we are strongly inclined to think that, under 2 Geo. 2, c. 23, an agent's bill could be taxed, as I held in the case of *Billing v. Coppock* (1 Exch. 14; S. C. 5 D. & L. 126), above cited.

"Even admitting that the Statute applies only to attorneys claiming costs against those who stand in the relation of clients to them, as the Statute mentions only one party to be charged, it does not follow that the town attorney may not hold the country attorney

liable, as being, as between them, his client; for there is no privity with the party, plaintiff or defendant, employing the country attorney, and he is certainly the only party to be charged by him.

"But even if this be not so, and the 2 Geo. 2, c. 23, did not apply to attorneys' agents claiming against attorneys, their principals, we are not to conclude that the 6 & 7 Vict. c. 73, does not; for the former Statute is repealed, and the latter Statute is much more extensive in its operation than the former was. It requires a bill to be delivered, and gives a power of taxing a bill, not merely for 'fees, charges, or disbursements' at law or in equity;—meaning fees, charges, and disbursements for business done in Courts of Law and Equity;—but for 'fees, charges, or disbursements for any business done by such attorney or solicitor.' This does not mean for every description of business which a person, being an attorney or solicitor, does for another, but for such professional business as he is employed to do as an attorney or solicitor,—this is by reason of his character as an attorney or solicitor; and we do not see any ground for holding, that as an attorney in London is clearly employed by an attorney in the country solely because he is an attorney, he may not be bound to deliver his bill for such agency, and be liable to have it taxed.

"Such a bill is for business done by an attorney in respect of an employment in his professional character as such. The objection that the officer of the Court would not know on what scale of allowance the bill ought to be taxed, as it depends on the agreement of the parties, does not appear to us to be of any weight; for in the ordinary relation of attorney and client, an attorney may bargain with his client for less than the established amount of fees and disbursements, and the Master must ascertain what that bargain was, and take it into his consideration, and when the bill is for conveyancing and business not done in Court, the Master, or taxing officer must ascertain the remuneration as well as he can, according to the contract of the parties, express or implied.

"And therefore we think, that whether the 2 Geo. 2, c. 23, did or did not apply to agency bills, the 6 & 7 Vict. c. 73, does; and therefore the rule for taxing the bill must be made absolute."

## LAW OF COSTS.

### PAYMENT OF, IN EJECTMENT BY NON-PARTIES TO RECORD.

IN an action of ejectment to recover certain plots of building ground, it appeared that the solicitor of the London and County Joint-Stock Banking Company, who were interested as equitable mortgagees of part of the premises, endeavoured after judgment signed to make terms with the plaintiff. It appeared

from the solicitor's affidavit that the defendant was also his client, and that he was never authorised by the bank to defend the ejectment on their account, but that all they sought was to secure their own interests as such equitable mortgagees: *Held*, that the plaintiff could not call on the bank to pay the costs,—the defendant having a substantial interest in the matter and appearing by his attorney. *Austey v. Edwards*, 16 Com. B. 312.

## INCORPORATED LAW SOCIETY.

### ANNUAL REPORT OF THE COUNCIL.

[Concluded from p. 290, ante.]

#### VI. MALPRACTICE CASES.

In the course of the past year the Council have investigated the complaints made against eleven attorneys, and they regret to state that their duty to the Profession and the Public compelled them to bring several of the offending parties before the Court.

In one of them a long and expensive inquiry took place, on a reference to the Master; and on his report, and a hearing before the Court, the party was suspended from practising for two years. The offence consisted of swearing to the payment of several witnesses in two causes to a larger amount than had been actually made.

In a second case of the same kind before the Court, last Trinity Term, although the attorney did not himself swear to the alleged payments, he adopted the affidavit of his clerk, and the Court suspended him from practising for twelve months.

On this subject it may be mentioned that the Council had under consideration a suggestion for altering the practice in this respect on affidavits of increase. The rules of practice require the actual payment of witnesses, and the proof of such payment, by affidavit, before allowance by the taxing officer; and the Council communicated with some of the Masters of the different Courts on the subject; but the Council, after mature deliberation, came to the conclusion that, although inconvenience may occasionally result from the existing practice, the proposed alterations would introduce still greater inconvenience, and would open the door to serious frauds.

*Renewal of Certificates*, after ceasing more than a year to practise, or not taking out a certificate more than a year from admission:—In one of these cases, the applicant, who was an insolvent debtor, had been remanded for a long period on the ground of fraudulent breaches of trust, was opposed by the Society, and his certificate refused. In several other instances, the parties having been entirely out of the Profession for several years, were subjected to the usual examination prior to the grant of the renewed certificate.

In another case which was brought before the Master of the Rolls last year, his Honour considered that the petition to him was, in effect, an appeal from the Queen's Bench, and decided that he could not entertain the application, and that the new evidence in the case must be submitted to the Common Law Court.

The case was brought before the Court of Queen's Bench in Easter Term of this year, founded on alleged new facts, and a rule was granted for the Incorporated Law Society, as Registrars of Attorneys, to show cause why the attorney's certificate should not be issued. The argument came on last Term, and occupied nearly two days. The Court took time to consider, but have not yet pronounced their judgment.

#### VII. USAGES AND PRACTICE OF THE PROFESSION.

The Council have had many cases submitted to their opinion on the usage of the Profession in conveyancing matters, where disputes had arisen between the respective solicitors; and their determination has been entered in the book of usages kept in the secretary's office.

The *New Rules and Orders of Court*, which have been made during the last twelve months, have been printed at the expense of the Society, and transmitted to the members: a list thereof will be found in the Appendix.

*Proposed Half-holiday on Saturdays*.—The Council have received a memorial from 234 solicitors practising in London, comprising most of the principal firms, suggesting that the transaction of legal business should close at two o'clock on Saturdays; and they addressed the Lord Chancellor and the Judges, stating that for some time past in Scotland, and in Manchester and Liverpool, the transaction of legal business had closed at two o'clock on Saturdays, and that some of the mercantile and trading communities of London also ceased from business on Saturdays at or about that time.

The Council concurred in the expediency of the proposed alteration, and suggested that, in case the proposition should be favourably entertained, that it would be necessary to promulgate an order for closing the Courts, and offices of the Court at the proposed hour, and to direct that the service of orders, summonses, notices, and other proceedings, after two o'clock on that day, be deemed as made on the following Monday. The Council also transmitted copies of the memorial to all the leading members of the Bar, and requested the favour of their promoting the object in such a manner as they might deem proper.

They have received an answer from the Lord Chief Justice of the Court of Queen's Bench, stating that the Judges think very serious inconvenience would arise to the suitors from acceding to the proposal, although the Judges highly approve of the kind intentions towards the clerks, and would be very willing to assist in as far as is consistent with the due administration of justice. His lordship adds, that he

believes the Judges would agree to the proposal for Saturdays, substituting five o'clock for two, if this would give satisfaction. The Lord Chancellor has also informed the Council that, having due regard to the interests of the public, he feared all he could do in the matter was to undertake himself to rise at three o'clock on Saturdays.

The Council have recently received a memorial from a very numerous body of the law clerks of London, urging further measures for accomplishing the object.

*Encroachments on the Profession.*—The members of the Society have reason to complain of the encroachments of unqualified persons on the proper province of the regular legal practitioner. Persons calling themselves accountants, house agents, or law stationers, advertise themselves as competent to discharge many of the duties properly belonging to solicitors; such as preparing and passing accounts at the Legacy and Succession Duty Offices, the registry of bills of sale, searches for judgments, and acting in several matters connected with conveyancing transactions. The conduct of these persons is watched; and when sufficient evidence is obtained, the Council will take the proper steps to punish the offenders. In some instances they send abstracts of titles and draft agreements. The Council recommend solicitors not to recognise such persons; and in case they act contrary to the provisions of the Stamp Act, that the facts should be brought to the knowledge of the Council, who in such cases call upon the Solicitor of Inland Revenue to take proceedings against the parties.

#### VIII. GENERAL AFFAIRS OF THE SOCIETY.

The additions to the *Library* in the past year have been nearly 400 volumes; and the whole collection comprises 12,000 volumes, or thereabouts, exclusive of the Parliamentary works now in progress for the present Session.

Several donations to the library have been received during the year from authors, some of whom are members of the Society, and from several other gentlemen, whose names are recorded in the donation book; and from the Ecclesiastical Commissioners, the East India Company, the Library Committee of the City of London, and the Law Library of Manchester. The Council are glad especially to notice, the appropriate gift of Thomas Duan, Esq., late of Threadneedle Street, who, on retiring from the Profession, presented the Society with the sum of 10 guineas, which has been applied to the purchase of Hertlet's Treaties and Conventions in eight volumes.

The *Lectures* have been well attended by the members, and an average of 180 students. The lecturers were Mr. Shee, Mr. Baggallay, and Mr. Charles Pollock.

The *Members* have considerably increased in number: before the reduction of the admission fee in June, 1853, they were 1,301; they are now 1,504, being an increase in two years of 203, after deducting the deaths and retirements.

The *State of the Funds* of the Society will appear by the Auditor's Account, which as usual has been laid for inspection in the Secretary's Office since the 15th April. It may here be briefly stated that, out of the surplus income of the Society, 1,000*l.* of the debt has been paid off, and the receipts for the year amount to 7,548*l.* 8*s.* 6*d.*, and the payments to 7,862*l.* 17*s.* 4*d.*, leaving a balance at the bankers' of 225*l.* 8*s.* 8*d.* on the 31st of December last, since which a further sum of 500*l.* has been paid out of the surplus income, in further reduction of the loan. The sums invested for the Society amount to 79,729*l.* in freehold land and buildings, and 12,202*l.* in books, fixtures, and furniture, making together the sum of 91,931*l.*

*Vacancies in the Council.*—The circular convening the present meeting will have informed the members of the vacancies in the Council by the retirement of Mr. Edward Lawford, and the decease of Mr. Thomas Clarke. The great services rendered to the Society by Mr. Clarke, are recorded in the Resolution of the Council, unanimously passed at the close of his year of office as President of the Society. It is as follows:—"That the Council have witnessed, with great respect, Mr. Clarke's judicious and diligent discharge, upon all occasions, of the arduous duties connected with his important office; but they desire especially to record their admiration of the professional knowledge, alike extensive and accurate, which he has brought to bear upon the various subjects that have successively engaged the attention of the Council. The firmness, tempered by courtesy, with which he has presided over their deliberations, and the judgment which has marked his official communications with the Bar and with members of the Legislature, and which has materially tended to elevate the character of the Society, and enhance its utility to the Profession and the Public. The Council feel that such qualities in their President, valuable as they must be at any season, have been peculiarly important at a time when great and momentous changes have continually been effected or proposed in the municipal institutions of the country, perplexing from their variety, formidable for their magnitude, and which have been urged forward with a despatch unexampled in any former period of our legal history."

(Signed) JNO. J. SUDLOW, *President.*

#### PROCEEDINGS AND RESOLUTIONS AT THE ANNUAL GENERAL MEETING,

*Holden at the Society's Hall, on Tuesday, the 26th June, 1855.*

1. Read the circular convening the meeting,

<sup>1</sup> The Society has purchased several houses in Chancery Lane and Bell Yard on the South side of the present buildings, on which it is intended to erect a new wing similar to that on the North side. Part of the loan was raised to complete this purchase.



and the minutes of the last Annual General Meeting.

2. The President stated the vacancies in the offices of President, Vice-President, and in the Council and Auditors, and the names of the persons proposed to fill those vacancies.

A show of hands was taken on each name so proposed.

A ballot was then demanded for the election of ten members to fill the vacancies for members of the Council; and the President appointed the following members present as Scrutineers to superintend the ballot during its progress, and to report the result to the meeting: namely, Mr. *James Anderton* and Mr. *Daniel Smith Bockett*.

Read the Report afterwards made by the Scrutineers,

And the President thereupon declared,

That *Edward Savage Bailey*, *Alfred Bell*, *Bartle John Laurie Frere*, *Bryan Holme*, *Henry Lake*, *Joseph Maynard*, *Charles Ranken*, and *Edward White*, were elected Members of the Council, in lieu of those who go out of office by rotation.

That *John Henry Bolton* (Lincoln's Inn) was elected a Member of the Council, in lieu of *Thomas Clarke*, deceased.

That *William Murray* (London Street, City) was elected a Member of the Council in lieu of *Edward Lawford*, resigned.

That *Keith Barnes* be and he is hereby declared to be elected President of the Society.

That *Edward White* be and he is hereby declared to be elected Vice-President of the Society.

That *James Beaumont*, *Nathaniel Charles Milne*, and *John Marmaduke Teesdale*, be and they are hereby declared to be elected Auditors of the Accounts of the Society.

3. Read the Annual Report of the Council.

*Resolved*,—That the Report of the Council be received and entered on the Minutes; and the Report, or such parts of it as the Council shall think fit, be printed for the use of members.

4. Read the Auditors' Report of the Accounts of the Society.

*Resolved*,—That the Auditors' Report be approved and signed by the President.

5. It was moved by Mr. *Ripley*, seconded by Mr. *Nicol*, and

*Resolved*,—That the 26th Bye-law, by which it is provided "that the President, Vice-President, and Members of the Council, going out of Office on the day of the Annual Meeting, shall be immediately re-eligible," be repealed, and in lieu thereof, that the 26th Bye-law shall be:—

"That the Members of the Council going out of Office on the day of the Annual Meeting shall not be eligible for re-election until the next Annual Meeting subsequent to their going out of Office."

<sup>2</sup> This resolution has not been confirmed at any subsequent General Meeting, as required by the 17th Bye-law.

6. It was moved, seconded, and *Resolved*,—That the best thanks of the Meeting be presented to the President for his able conduct in the Chair, and for his invaluable services, not only during his year of Office, but on all occasions in behalf of the Society, and the Profession in general, whose several interests he has eminently promoted.

## NEW REGULATION OF INLAND LETTERS.

### ABOLITION OF MONEY PAYMENTS.

THE following notice has just been issued:—  
On and from the 14th instant the regulation which prohibits money pre-payments on inland letters will be extended to the Chief Office, St. Martins-le-Grand, with the following exception, viz., when the postage on the letters sent to be posted at the Chief Office by one individual or firm, shall collectively amount to 1*l.* and upwards, provided the letters are posted between the hours of 10 A. M. and 5 P. M.

With this exception, all inland letters must either be pre-paid by stamps or be sent unpaid. These regulations do not affect letters addressed to places abroad, which may still be pre-paid by money or stamps, at the option of the sender.

### REGISTERING LETTERS.

On and after Wednesday, the 15th August, all persons who arrive at the Lombard Street Branch Office before 20 minutes past 5 o'clock P. M., for the purpose of registering letters, will have their letters registered the same evening, but no persons reaching the office after that hour will have their letters accepted. With a view to facilitate their despatch, persons tendering several letters for registry are requested to bring with them two lists enumerating such letters. One of these lists will be signed and returned, and the other retained for the use of the department. The public are also requested to take notice that, on the mornings of despatch of the Indian mails, *vis* Marseilles, letters from France, India, &c., if paid for in money, should be presented at the Lombard Street Branch Office not later than 11. 35 A. M., i. e., ten minutes before the closing of the boxes for stamped letters.

(Signed) ROWLAND HILL,  
Secretary.

## SELECTIONS FROM CORRESPONDENCE.

To the Editor of the Legal Observer.

## COUNTY COURTS.

SIR.—Perhaps it is not generally known, that if a plaintiff should not have taken proceedings in these Courts against a debt, for *more than a year*, it is necessary that the plaintiff should attend on a Court-day and make formal application for leave to proceed. Now, sir, I think this rule very absurd, inasmuch as if you reside in London you may have to go into the country to find out when a Court is appointed. I did so on two occasions and was put to great inconvenience; surely some reform ought to be called for.

G. M.

## NOTES OF THE WEEK.

## LAW APPOINTMENTS.

The Queen has been pleased to appoint *William Eccles, Esq.*, to be a member of the Legislative Council of the Island of Trinidad; and *W. Thomas Bridges, Esq.*, Barrister-at-Law, to be a member of the Legislative Council of the Island of Hong Kong, during the absence of *Paul Joy Stirling, Esq.*, a member of that Board.—From the *London Gazette* of 10th August.

*Mr. G. Oke* has been appointed Assistant Clerk to the Mansion House Police Court.

*Charles Evans, Esq.*, has been appointed Revising Barrister for the Town and County of Cambridge and Isle of Ely.

*Mr. James Sparke, Solicitor*, has been appointed clerk of the Peace, and *Mr. William Salmon, solicitor*, Town Clerk of Bury St. Edmunds, in the room of *Mr. Joseph Hanby Holmes*, deceased.

*Mr. James Augustus Sinclair* has been ap-

pointed Clerk of the Peace for the County of Aberdeen.—*Observer.*

*Mr. Russell* has resigned the Chairmanship of the Great Western Railway, and is succeeded by *Mr. Spencer Walpole*.—*Railway Record.*

*William Nathaniel Massey, Esq., M.P.*, Barrister-at-Law, has been appointed Under Secretary of State for the Home Department, in the room of the Honourable *William Francis Cowper*, now President of the Board of Health.—*Globe.*

The Right Hon. *Robert Lowe, M.P.*, Barrister-at-Law, was, on the 13th inst., by her Majesty's command, sworn of her Majesty's Most Hon. Privy Council.

Her Majesty in Council was this day (13th August) pleased to appoint the Right Honourable *Robert Lowe, M. P.*, President of the Committee of Council appointed for the consideration of all matters relating to Trade and Foreign Plantations, in the absence of the President of the said Committee for the time being.

The Queen has been pleased to direct Letters Patent to be passed under the Great Seal for nominating, constituting, and appointing The Right Hon. *Edward Pleydell Bouverie, M. P.*, Barrister-at-Law, to be a Poor Law Commissioner for England.—From the *London Gazette* of 14th August.

The Queen has been pleased to confer the honour of Knighthood upon *Mr. Justice Willes*.

## POSTPONED BILLS.

A complete list of the numerous Bills postponed or negatived in the recent Session, will be given in our next number, with some notes and comments.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

## Master of the Rolls.

*Finch v. Hollingsworth.* July 9, 1855.

POWER OF APPOINTMENT AMONG RELATIONS OF TESTATOR.—WILL.—CONSTRUCTION.

The testator gave the residue of his real and personal estate to his wife for life, and after her death, as to one moiety, among her relations in equal shares, and as to the other, among his relations, as she should by will direct. The widow appointed among such as were living at her death: Held, a valid appointment.

THE testator gave the residue of his real and

personal estate to his wife for life, and after her death, as to one moiety, among her relations in equal shares, and as to the other, to his relations as she should by will direct. The widow appointed among the relations of the testator living at her death in the shares mentioned in her will, and the question now arose, whether the next of kin at the time of the testator's death were not the proper objects of the power.

*Cole and Smythe* for the several parties.

The Master of the Rolls held, that in accordance with the decision of *Pope v. Whitcombe*, as reported in *Sugden on Powers*, app. 29, the appointment was good.

## Vice-Chancellor WILSON.

*Barrow v. Methold.* July 27, 1855.

## WILL.—CONSTRUCTION.—PREMIUM OF INSURANCE.

*A bonus was declared on a policy of insurance on a testator's life shortly before the date of his will, whereby he gave to his wife "the premium of insurance" on his life "for her immediate expenses." Held, that the widow was only entitled to the bonus and not to the amount of the policy.*

THE testator gave to his wife "the premium of insurance" on his life in an insurance office "for her immediate expenses." A question now arose whether a bonus declared on the policy shortly before the will was made, passed to the wife.

*Speed and Rasch* for the several parties.

The Vice-Chancellor held, that the bonus alone passed under the bequest.

*Esparle the Trustees of Cheshunt College.*  
July 31, 1855.

## INVESTMENT OF PURCHASE-MONEY OF CHARITY FREEHOLD LANDS IN ENFRANCHISEMENT.

*The purchase-money of freehold lands belonging to a charity was ordered, under the 8 & 9 Vict. c. 18, s. 69, on petition, to be applied in enfranchising copyholds belonging to the charity, and without the concurrence of the Charity Commissioners being obtained.*

THIS was a petition on behalf of the trustees of this charity, for the application in the enfranchisement of certain copyhold land, of the purchase-money paid into Court for freeholds taken by the New River Company under their Act.

*Reilly* in support.

The Vice-Chancellor made the order under the 8 & 9 Vict. c. 18, s. 69,<sup>1</sup> and held that the concurrence of the Charity Commissioners was not necessary.

<sup>1</sup> Which enacts, that "if the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation," "the same shall be paid into the bank in the name and with the privity of the Accountant-General of the Court of Chancery in England, if the same relate to lands in England and Wales," "and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes (that is to say): In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts or purposes.

*Manby v. Bewick.* Aug. 1, 1855.

## SECURITY FOR COSTS AFTER UNSUCCESSFUL ACTION AT LAW.

*A suit was instituted after an unsuccessful action at law in which the costs remained unpaid in consequence of the plaintiff having his house locked up, but he had paid the costs of a demurrer, upon the allowance of which he had obtained leave to amend: A motion to compel security to be given for costs in the suit was refused.*

*Willcock* and *Toller* appeared in support of this motion to compel the plaintiff in this suit to give security for costs. It appeared that an action of ejectment had been brought in which the present defendants obtained judgment, but the costs had not been paid, in consequence of the plaintiff, who was a gardener, leaving his house, at which he was described in the bill to reside, locked up. A demurrer had been allowed to the bill, with leave to amend on payment of costs, which had been paid.

*Rolt, Roxburgh, and C. L. Webb* for the plaintiff.

The Vice-Chancellor said, that in accordance with the case of *Hurst v. Padwick*, 12 Jur. 21, and as the costs of the demurrer had been paid, the motion would be refused.

## Exchequer Chamber.

*Rees v. Watts.* June 30, 1855.

## SET-OFF IN ACTION BY ADMINISTRATOR OF DEBT DUE FROM INTESTATE.

*Held, on error from, and affirming the decision of, the Court of Exchequer, that the defendant in an action by an administrator to recover a debt due to himself in that character cannot set-off under the 2 Geo. 2, c. 22, s. 13, a debt due from the intestate in his lifetime for money lent and work done and materials supplied.*

THIS was a writ of error from the judgment of the Court of Exchequer overruling a demurrer to a plea in this action (reported 9 Exch. R. 696). It appeared that the plaintiff sued as administrator to recover a debt due to him in that character, to which the defendant pleaded a set-off in respect of money lent by him to, and for work done for, and materials supplied to, the intestate in his lifetime.

*Bovill* for the plaintiff in error; *Pashley and Henniker*, contra.

*Cur. ad. vult.*

The Court said, that under the 2 Geo. 2, c. 22, s. 13,<sup>1</sup> the debt sought to be set-off must have arisen between the same parties, whereas in the present case this was not so, and the decision of the Court below would therefore be affirmed.

<sup>1</sup> Which enacts, that "where there are mutual debts between the plaintiff and defendant, or if either party sue or be sued as executor or administrator where there are mutual debts between the testator or intestate and either party, one debt may be set against the other."

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, AUGUST 25, 1855.

### POSTPONED BILLS OF THE SESSION, 1855.

In our last Number we presented a bird's eye view of the several Statutes which had passed both Houses of Parliament and received the Royal Assent. Some of them are not in so efficient a state as their promoters suggested, and further Bills on the same subjects may be expected in the next Session. Amongst these we may particularise the Limited Liability Act, the Charitable Trusts Act, the Public Health Act, and the Criminal Law Acts.

We purpose now to give a general notice of the various measures (about thirty in number) which were introduced into one or other of the Houses of Parliament in the course of the late Session, some of which slumbered, from their first appearance,—others were conducted successfully through one of the houses,—a few were positively negatived or thrown out on a division,—and the remainder were withdrawn, either voluntarily, as ill-timed, or objectionable, or on account of palpable indications of such stout opposition that there was no hope of overcoming at present. A more distinct view of the nature and scope of those projected laws will be obtained by arranging them under the different departments of law to which they belong.

I. The *Law of Property* Bills, which are no less than six in number, namely,—1st. The Leases and Sales of Settled Estates. 2nd. The Executor and Trustee Society. 3rd. The Real Estates of Intestates. 4th. The Personal Estates of Intestates. 5th. The Powers under Drainage and other Improvement of Lands Acts. 6th. The Amendment of the Mortmain Act.

VOL. L. No. 1,433.

Of the Settled Estates Bill, our readers are aware that its beneficial object was to enable, under certain restrictions, the Court of Chancery to empower trustees or others to grant leases, or sell or exchange lands, at the instance of and for the benefit of the persons beneficially interested, who would otherwise have no remedy but the enormously expensive one of a resort to Parliament. The principle of the Bill was excellent, for it would have enabled the tenants for life and their families, or others interested in the reversion, to apply to the Court of Chancery and improve their incomes where the estates were of comparatively moderate amount and insufficient to justify the cost of a private Bill. As the Law stands, the wealthy proprietors can procure that which is in effect denied to others. Where the rental may be 10,000*l.* or even 5,000*l.* a year, it may be worth while to expend a few thousands in obtaining an Act of Parliament; but if the rental be 1,000*l.* only, the sacrifice is too great. Now, had this Bill passed, we have no doubt that hundreds of persons would be enabled from time to time to apply to the Court of Chancery and obtain the requisite power to effect their objects.

Besides, where the application is not approved by all the persons who are interested in the property, the dissentients at a moderate expense can have their objections heard and impartially decided—an advantage which is not possessed in opposing Bills of Parliament, where local interests may prevail, and where, at all events, the cost is enormous. We are assured, however that this Bill will be again introduced by Lord Cranworth early in the next Session.

As to the Executor and Trustee Joint-Stock Company, we are told that an attempt will be made to construct the association under the Limited Liability Act; but that Act will not confer the powers which were improperly sought to be obtained from Parliament. The liability of the shareholders may be limited, but they will not have power to make a trading profit out of the trust, unless the will or settlement expressly authorise it, and trustees will not be indemnified in transferring their legal and moral obligations to the strangers who compose the managing body of the projected company.

Mr. Locke King's proposal for abolishing, to a certain extent, the Law of Primogeniture, so far as relates to the *Real Estates* of persons dying intestate, was rejected in the House of Commons; and if it should have passed there, the probability is, that the Lords would have thrown it out. Another Bill of the same honourable member relating to the *Personal Estates* of Intestates passed the Commons, but went no further than the first stage in the Lords.

The Bill for giving further powers relating to the Drainage and other improvements of Lands, might be well consolidated with the Settled Estates Bill, and the Court of Chancery authorised to inquire into and decide on these claims without the expense of parliamentary applications.

## II. *The Ecclesiastical Courts.*

The Testamentary Jurisdiction Bill will doubtless be again brought before Parliament.—On this important measure of Law Reform, we shall take an early opportunity of calling attention to the speech of Lord Lyndhurst, and the answer given to it by the Lord Chancellor.

As it appears impossible to delay much longer the reform of these Courts, and the transfer of the Testamentary Jurisdiction either to another Court, or the establishment of a Royal Court of Probate, it is not improbable that the advocates and proctors of Doctors' Commons may propose a plan of reform for the removal of the principal objections which apply to the present Courts. If their project should be framed on a liberal and comprehensive scale, it will, of course, receive due consideration as coming from a highly respectable and able body of legal practitioners; but the general opinion of the Profession at large is, we believe, in favour of the amalgamation of the attorneys and solicitors with the proctors, and of the Bar of the Queen's Courts with the Doctors of Civil Law.

## III. *Common Law.*

It may not be inappropriate to place the following Bills under the head of Common Law, as they relate to, or will generally be carried into effect by the Common Law Courts. The first of these is the Law of Partnership Amendment Bill, which being connected with the Limited Liability Act, will probably meet with more favourable consideration in the next Session. It is expected that the principle of the Act already passed will be further extended.

2nd. The Bankers' Drafts Bill, by which every order on a banker was required to be stamped,—a measure that would no doubt have brought a considerable increase to the Inland Revenue, but which would probably have been extensively evaded and productive of much inconvenience, particularly in the more numerous class of small payments.

3rd. The Judgment Execution Bill, we regret, has been again postponed, under which English Judgments might have been enforced in Ireland and Scotland; and Irish and Scotch Judgments enforced in the English Courts.

## IV. *The Criminal Law Bills.*

Although two of these measures attained maturity, namely,—the Criminal Justice Act and the Youthful Offenders' Act, so many as five other Bills were postponed. The 1st being the Assizes and Sessions Bill;—the 2nd the Public Prosecutors' Bill; 3rd, the Speedy Trial of Offenders' Bill; 4th the Grand Juries' Bill; and 5th, the Justices of the Peace Bill.

The Assizes and Sessions Bill, with which may be classed the Speedy Trial of Offenders' Bill, would effect an important change in the administration of Criminal Justice. Doubtless, it is desirable that the accused should be speedily tried;—acquitted and released from confinement if innocent, or promptly punished if found guilty. But it has hitherto been deemed important that, not only at the Assizes but at the Sessions, arrangements should be made to render it worth while for a sufficient number of Barristers to attend the Court, giving both prosecutors and prisoners the choice of several counsel. Now, if the rule be carried out, that there must be frequent gaol deliveries, and, instead of four Quarterly Sessions, eight or more,—the cases for trial will, at each Sessions, be so few that they will not defray the expenses of the attendance of the Bar; and (as Mr. Warren urges) this means of acquiring a practical knowledge of their important profession will be destroyed. We apprehend,

however, that this argument will not prevail. Our public writers will contend that innocent men are not to be kept in custody, nor guilty men escape their early punishment, for the sake of accumulating a sufficient quantum of business to exercise the forensic talent of the rising barrister.

The consequence will be, that the provincial Attorneys must be allowed to appear as Advocates at the Sessions. The old rule, we understand, was, that the Attorneys had audience at the Sessions, if there were not so many as four counsel in attendance; and this regulation must be restored if the increased number of Sessions should have the effect of preventing a sufficient attendance of counsel.

The Public Prosecutors' Bill must undergo several alterations before it can properly be allowed to pass. Supposing it to be conceded that a Public Prosecutor is desirable, the other official appointments proposed by the Bill should be materially altered. Deputy Prosecutors in different parts of the country may be necessary; but a band of district agents can scarcely be tolerated for the purpose of superseding the employment of Attorneys, and preventing the parties who have been robbed, or the accused, from selecting the legal advisers in whom they have confidence.

With respect to Grand Juries and Justices of the Peace, the Bills for effecting the objects proposed by their several promoters, require great consideration before they are allowed to pass.

#### V. *The Law of Parliament.*

The proposed Acts in this department were,—1st. The Acts of Parliament amending Bill, enacting at once some of the recommendations which are under the consideration of the Criminal Law Commissioners. 2nd. The abolition of the rule by which Members accepting office under the Crown thereby vacate their seats and are obliged to be re-elected by their constituents or seek another seat. And 3rd. The Abolition of the Oath of Abjuration, which concluding with the words "on the true faith of a Christian," precludes the Jews from sitting in Parliament.

#### VI. *The Church and Parochial Law.*

The most important of these postponed Bills is that relating to Church Rates, on which so many thousands have been expended in litigation, and which has occasioned so much ill-feeling amongst the Dissenters from the Church of England.

Then came the Episcopal and Capitular

Estates Bill,—relating to a large part of the property of the Church.

The Law of Marriage Bill may be classed next, whereby it was proposed to alter the prohibition relating to Marriages between Widowers and their deceased Wives' Sisters and Nieces; and the Dissenters' Marriages Bill for removing some restrictive forms of notice, which are deemed inconvenient and objectionable.

It was also proposed to alter the Law regarding the Formation of Parishes, and which, if passed, would somewhat affect the present extent of church patronage.

#### VII. *The Public Health.*

In this department, of what may be called Domestic Government, under the control especially of the Home Secretary, much yet remains to be done for the benefit and well-being of this vast metropolis. Several Acts have been passed in recent Sessions, but it seems that much yet remains to be done to secure the public health without unduly encroaching on the rights of private property. The Metropolitan Local Management Act and the Buildings' Act it is expected will effect much good, and it is trusted that in the next Session the proposed sanatory measures will be completed.

#### VIII. *Education.*

The great length of time which Parliament devoted to the consideration of the various plans of Education for the poorer classes at the expense of the State, have not resulted in any useful measure at present. Perhaps this branch of legislation does not in strictness belong to the Profession, yet, whenever the proposed new Law shall be passed, it will become the duty of the lawyer to carry it into practical effect, by enforcing the provisions that may be enacted.

#### IX. *The Medical Profession.*

We ought not to pass unnoticed the delay which has taken place in considering the Bill for amending the Laws relating to the Medical Profession. We are not aware that the Bill which was introduced last Session, met with the general approbation of different sections of the Medical Profession; but it is evident that considerable dissatisfaction prevails on the present state of the Law and some improvements are urgently demanded.

#### X. *The Laws of Scotland and Ireland.*

Bills were introduced for the consolidation and amendment of the Law of

Bankruptcy, and in Ireland for the improvement of the Court of Chancery, and of the Law of Landlord and Tenant,—all of which stand over to another Session.

## NOTICES OF MOTIONS

FOR THE

### NEXT SESSION OF PARLIAMENT.

**THE Marquis of Blandford.**—*Episcopal and Capitular Estates.*—Bill to make better provision for the management of Episcopal and Capitular Estates.

**The Marquis of Blandford.**—*Formation, &c., of Parishes.*—Bill to make better provision for the Formation and Endowment of separate and distinct parishes.

**Sir James East.**—Bill for *remedy against the Hundred*, in the case of the breaking of windows by a riotous and tumultuous assemblage of persons.

**Mr. Ewart.**—Bill to extend to certain Scottish Boroughs, now administered on a principle of self election, the privileges of the *Scottish Municipal Reform Act*.

**Mr. Heywood.**—*Marriage Law Amendment.* Bill to amend the Law of Marriage, so far as relates to certain marriages of collateral affinity.

**Mr. Knight.**—Select Committee to inquire into the circumstances of the informations, *swuits*, and other matters carried on *against the Trustees of Charities* by the solicitors of the Attorney-General, or by other parties.

**Mr. Malins.**—Bill to enable *Married Women* to dispose of *Reversionary Interests* and *Personal Estate*.

**Mr. Malins.**—Bill to abolish all distinctions between *Specialty* and *Simple Contract Debts*.

**Mr. Murrough.**—Bill to abolish the *Property Qualification* of Members of Parliament.

**Mr. Napier.**—*Administrative Reform.*—That it is the opinion of this House, that in any measure of Administrative Reform, provision should be made for a responsible department of *public justice*, with a view to secure the skillful preparation and proper structure of Parliamentary Bills, and promote the progressive improvement of the law.

**Mr. John George Phillimore.**—*Registration of Charges on Land.*—Bill for the Registration of Charges on Land throughout England.

**Mr. Robert Phillimore.**—Bill for the further reform of the *Ecclesiastical Courts* in England and Wales.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages:—

Purchasers' Protection, 18 Vict. c. 15,—p. 5.  
Lunacy Regulation Act, c. 13,—p. 32.  
Commons' Inclosure, c. 14,—p. 32.

Newspaper Stamp Duties, c. 27,—p. 137.  
Sewers (House Drainage), c. 30,—p. 139.  
House of Commons' Proceedings, c. 33,—p. 139.

Income Tax, c. 20,—p. 197.

Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.

Administration of Oaths Abroad, 18 & 19 Vict. c. 42,—p. 175.

Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.

Common Law Pleadings, c. 26,—p. 176.

Infants' Marriage Settlements, c. 33,—p. 198.

Palatine of Lancaster Trials, c. 45,—p. 241.

Bills of Exchange and Promissory Notes, c. 67,—p. 256.

Cinque Ports, c. 48,—p. 258.

Commons Inclosure (No. 2), c. 61,—p. 275.

Incumbered Estates Acts (Ireland) Continuance, c. 73,—p. 276.

Places of Religious Worship Registration, c. 81,—p. 276.

Friendly Societies, c. 63,—p. 296, 319.

Limited Liability, c. 133,—p. 316.

## LIMITED LIABILITY.

18 & 19 VICT. c. 133.

Mode of obtaining limited liability by future companies; s. 1.

Mode of obtaining limited liability by companies now or hereafter registered; s. 2.

Mode of obtaining limited liability by existing companies constituted under private Acts of Parliament; s. 3.

Regulations to be observed on complete registration with limited liability; s. 4.

Penalties to be inflicted for non-observance of such regulations; s. 5.

Every increase in the nominal capital to be registered under a penalty; s. 6.

Members of certificated companies to be free from personal liability; s. 7.

Effect of execution against company; s. 8.

If dividends be made and corporation insolvent, each director consenting thereto liable; s. 9.

Notes of shareholders not receivable in payment of calls; liability of each officer consenting to a loan to shareholders; s. 10.

Rights of creditors of existing companies preserved; s. 11.

Change in the name of a company under the Act not to affect the rights of the company or other parties; s. 12.

Companies to be dissolved and wound up when three-fourths of the capital lost; s. 13.

Auditors to be appointed subject to approval of Board of Trade; s. 14.

Recovery of penalties; s. 15.

Act to be taken as part of 7 & 8 Vict. c. 110; s. 16.

Provisions of 7 & 8 Vict. c. 111, 11 & 12

Vict. c. 45, and 12 & 13 Vict. c. 108, to apply to this Act; s. 17.

Act not to apply to Scotland; s. 18.

Short title; s. 19.

The following are the Title and Sections of the Act:—

An Act for limiting the Liability of Members of certain Joint Stock Companies.

[14th August, 1855.]

Whereas it is expedient to enable members of joint-stock companies to limit the liability for the debts and engagements of such companies to which they are now subject: Be it therefore enacted, as follows:—

1. Any joint-stock company to be formed under the Act of the 8 Vict. c. 110 (other than an assurance company), with a capital to be divided into shares of a nominal value not less than 10*l.* each, may obtain a certificate of complete registration with limited liability upon complying with the conditions following, in addition to doing all other matters and things now required in order to obtain a certificate of complete registration; that is to say,

- (1.) The promoters shall state on their returns to the office for provisional registration that such company is proposed to be formed with limited liability:
- (2.) The word "limited" shall be the last word of the name of the company:
- (3.) The deed of settlement shall contain a statement to the effect that the company is formed with limited liability:
- (4.) The deed of settlement shall be executed by shareholders, not less than 25 in number, holding shares to the amount in the aggregate of at least three-fourths of the nominal capital of the company, and there shall have been paid up by each of such shareholders on account of his shares not less than 20*l.* per centum:
- (5.) The payment of the above per-centage shall be acknowledged in or endorsed on the deed of settlement, and the fact of the same having been *bond fide* so paid shall be verified by a declaration of the promoters, or any two of them, made in pursuance of the Act made in the 6 Wm. 4, c. 62:

And upon such conditions being complied with, and such other matters and things done, the registrar of joint-stock companies shall grant a certificate of complete registration with limited liability to such company.

2. Any joint-stock company, except as aforesaid, now or hereafter completely registered under the said Act of the 8 Vict., may obtain a certificate of complete registration with limited liability, in manner and subject to the condition following; that is to say,

The directors of such company may, with the consent of at least three-fourths in number and value of its shareholders who may be present, personally or by proxy, at any general meeting summoned for

that purpose, make such alteration in the name, nominal value of shares, and deeds of settlement of the company as may be necessary for enabling it to comply with the conditions hereinbefore-mentioned with respect to joint-stock companies seeking to obtain certificates of complete registration with limited liability; and upon compliance with such conditions the registrar, after the affairs of the company shall at the expense of the company have been audited by some person appointed by the Board of Trade, and on certificate from the said Board that the complete solvency thereof has been established on such audit to its satisfaction, shall grant to such company, by its new name, a certificate of complete registration with limited liability, and thereupon all privileges and obligations hereby attached to companies with limited liability, their shareholders, directors, and officers, shall attach to the company named in such certificate, its shareholders, directors, and officers.

3. Any joint-stock company, except as aforesaid, constituted under any private Act of Parliament, whereof it shall be proved to the satisfaction of the Board of Trade, after the affairs of the company shall, at the expense of the company, have been audited by some person appointed by the Board of Trade, that the said company is perfectly solvent, and that not less than 20 per centum of three-fourths of the nominal capital of such company has been paid up, may obtain a certificate of complete registration with limited liability, in manner and subject to the condition following; that is to say,

The directors of such company may, with the consent of at least three-fourths in number and value of its shareholders who may be present, personally or by proxy, at any general meeting summoned for that purpose, make such alteration in the name and nominal value of shares as may be necessary for enabling it to comply with the condition in that behalf hereinbefore mentioned with respect to joint-stock companies seeking to obtain certificates of complete registration with limited liability; and upon compliance with such condition the registrar, on receipt of a certificate of the solvency of the company, and of the payment of capital as before mentioned, shall grant to such company, by its new name, a certificate of complete registration with limited liability; and thereupon all privileges and obligations hereby attached to companies with limited liability, their shareholders, directors, and officers, shall attach to the company named in such certificate, its shareholders, directors, and officers.

4. Every company that has obtained a certificate of complete registration with limited liability shall paint or affix, and shall keep



painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, cheques, orders for money, bills of parcels, invoices, receipts, letters, and other writings used in the transaction of the business of the company.

5. If such company do not paint or affix, and keep painted or affixed, its name, in the manner aforesaid, each of the directors thereof shall be liable to a penalty not exceeding 5*l*. for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any director or other officer of the company, or any person on its behalf, use any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issue or authorise the issue of any notice, advertisement, or other official publication of such company, or of any bill of exchange, promissory note, cheque, order for money, bill of parcels, invoice, receipt, letter, and other writing used in the transaction of the business of the company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of 50*l*., and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money, for the amount thereof, unless the same shall be duly paid by the company.

6. No increase to be made in the nominal capital of any company that has obtained a certificate of complete registration with limited liability shall be advertised or otherwise treated as part of the capital of such company, until it has been registered with the registrar of joint-stock companies; and no such registration shall be made unless a deed is produced to the registrar, executed by shareholders holding shares of the nominal value of not less than 10*l*. to the amount in the aggregate of at least three-fourths of the proposed increased capital of the company, nor unless it is proved to the registrar, by such acknowledgment and declaration as hereinafter mentioned, that upon each of such shares there has been paid up by the holder thereof an amount of not less than 20*l*. per centum; and if any such increase of capital as aforesaid be advertised or otherwise treated as part of the capital of the company before the same has been so registered, every director of such company shall incur a penalty of 50*l*.; and the payment of the above percentage shall be acknowledged in or endorsed on the deed so produced, and the fact of the same having been *bond fide* so paid shall be verified by a declaration of the directors, or any two of them, made in pursuance of the Act 6 Wm. 4, c. 62.

7. The members of a joint-stock company which has so obtained a certificate of complete

registration with limited liability, after such certificate is granted, notwithstanding the provisions contained in the said Act of the 8 Vict., shall not be liable, under any judgment, decree, or order which shall be obtained against such company, or for any debt or engagement of such company, further or otherwise than is hereinafter provided.

8. If any execution, sequestration, or other process in the nature of execution, either at Law or in Equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy or enforce such execution, sequestration, or other process, then such execution, sequestration, or other process may be issued against any of the shareholders to the extent of the portions of their shares respectively in the capital of the company not then paid up, but no shareholder shall be liable to pay in satisfaction of any one or more such execution, sequestration, or other process a greater sum than shall be equal to the portion of his shares not paid up: Provided always, that no such execution shall issue against any shareholder except upon an order of the Court, or of a Judge of the Court, in which the action, suit, or other proceeding shall have been brought or instituted, and such Court or Judge may order execution to issue accordingly, with the reasonable costs of such application, and execution to be taxed by a Master of the said Court; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

9. If the directors of any such company shall declare and pay any dividend when the company is known by them to be insolvent, or any dividend the payment of which would to their knowledge render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in office; provided that the amount for which they shall all be so liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall file their objection in writing with the clerk of the company, they shall be exempted from the said liability.

10. No note or obligation given by any shareholder to the company whereof he is a shareholder, whether secured by any pledge or otherwise, shall be considered as payment of any money due from him on any share held by him, and no loan of money shall be made by any such company to any shareholder therein; and if any such loan shall be made to a shareholder, the directors who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan, and interest for all the debts of the company con-

tracted before the repayment of the sum so lent.

11. Where any company completely registered under the said Act of the 8 Vict., or any company constituted under any Act of Parliament, shall obtain a certificate of complete registration with limited liability, the grant of such certificate shall not prejudice or affect any right which previously to the grant of such certificate has accrued to any creditor or other person against the company in its corporate capacity, or against any person then being or having been a member of such company, but every such creditor or other person shall be entitled to all such remedies against the company in its corporate capacity, and against every person then being or having been a member of such company, as he would have been entitled to in case such certificate had not been obtained.

12. No alteration made by virtue of this Act in the name of any company shall prejudice or affect any right which previously to such alteration has accrued to such company as against any other company or person, or which has accrued to any other company or person as against such company, but every such company as against any other company or person, and every other company or person as against such company and the members thereof, shall be entitled to all such remedies as they or he would have been entitled to if no such alteration had been made; and no such alteration shall abate or render defective any legal proceedings pending at the time when such alteration is made.

13. In the case of any company which has obtained a certificate of limited liability, whenever, on taking the yearly accounts of such company, or by any report of the auditors thereof, it appears that three-fourths of the subscribed capital stock of the company has been lost, or has become unavailable in the course of trade, from the insolvency of shareholders, or from any other cause, the trading and business of such company shall forthwith cease, or shall be carried on for the sole purpose of winding up its affairs; and the directors of such company shall forthwith take proper steps for the dissolution of such company, and for the winding up of its affairs, either by petition to the Court of Chancery, or by exercise of the powers of the deed of settlement, or by such other lawful course as they may think most fit.

14. In cases where a certificate of registration with limited liability has been obtained, when one auditor only shall have been appointed under the 38th section of the Act of the 8 Vict. c. 110, that single auditor, and when two or more such auditors shall have been so appointed then one of such auditors, shall be subject to the approval of the Board of Trade, and such board in case the auditor submitted to them for approval shall for any reason appear unfit or objectionable shall appoint another in his place.

15. Every pecuniary penalty imposed in

pursuance of this Act shall be deemed a debt due to the Crown, and shall be recoverable accordingly.

16. This Act shall, so far as is consistent with the contents and subject-matter thereof, be taken as part of and construed with the said Act of the 8 Vict. c. 110, and the Act of the 11 Vict. c. 78, and all the provisions of the said Acts, save in so far as they are varied by this Act, shall apply to persons and companies applying for or obtaining a certificate of complete registration with limited liability.

17. The provisions of the Act of the 8 Vict. c. 111, and of the Joint-Stock Companies' Winding-up Act, 1848, and of the Joint-Stock Companies Winding-up Amendment Act, 1849, shall apply to persons and companies obtaining a certificate of complete registration with limited liability, subject only to such variations as may be occasioned by the provisions of this Act.

18. This Act shall not apply to Scotland.

19. This Act may be cited for all purposes as "The Limited Liability Act, 1855."

#### FRIENDLY SOCIETIES.

18 & 19 VICT. c. 63.

[Continued from page 301.]

25. Before any friendly society shall be established under this Act, the persons intending to establish the same shall agree upon and frame a set of rules for the regulation, government, and management of such society; and in such rules they may, amongst other things, make provision for appointing a general committee of management of such society, and delegating to such committee all or any of the powers given by this Act to the members of friendly societies formed or established under or by virtue of the same; and such rules shall set forth,

1. The name of the society and place of meeting for the business of the society;
2. The whole of the objects for which the society is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such society;
3. The manner of making, altering, amending, and rescinding rules;
4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers;
5. A provision for the investment of the funds, and for an annual or periodical audit of accounts;
6. The manner in which disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled;

And the rules of every such society shall provide that all moneys received or paid on account

of each and every particular fund or benefit assured to the members thereof, their husbands, wives, children, fathers, mothers, brothers or sisters, nephews or nieces, for which a separate table of contributions payable shall have been adopted, shall be entered in a separate account, distinct from the moneys received and paid on account of any other benefit or fund, and also that a contribution shall be made to defray the necessary expenses of management, and a separate account shall be kept of such contributions and expenses.

26. Two printed or written copies of such rules, signed by three of the intended members and the secretary or other officer, shall be transmitted to the registrar aforesaid, and the said registrar shall advise with the secretary or other officer, if required, for the purpose of ascertaining whether the said rules are calculated to carry into effect the intentions and object of the persons who desire to form such society, and if the registrar shall find that such rules are in conformity with law and with the provisions of this Act, he shall give a certificate in the form set forth in the second Schedule to this Act, and shall return one of the said copies to the said society, and shall keep the other in such manner as shall from time to time be directed by one of her Majesty's Principal Secretaries of State, and for which certificate no fee shall be payable to the said registrar; and all rules, when so certified as aforesaid, shall be binding on the several members of the said society: Provided always, that it shall not be lawful for the said registrar to grant any such certificate to a society assuring to any member thereof a certain annuity or certain superannuation, deferred or immediate, unless the tables of contributions payable for such kind of assurance shall have been certified under the hand of the actuary to the Commissioners for Reduction of the National Debt, or by an actuary of some life assurance company established in London, Edinburgh, or Dublin, who shall have exercised the profession of actuary for at least five years, and such certificate be transmitted to the registrar, together with the copies of the rules aforesaid.

27. After the rules of a friendly society shall have been so certified by the registrar as aforesaid, it shall be lawful for such society, by resolution at a meeting specially called for that purpose, to alter, amend, or rescind the same or any of them, or to make new rules; and it shall be lawful for any friendly society formed and established under any of the Acts hereby repealed to alter, amend, or rescind the rules by which their society is governed, regulated, or managed, or to make new rules: Provided always, that two copies of the proposed alterations or amendments, and of such new rules, signed by three members of such society, and the secretary or other officer shall be transmitted to the said registrar, to one of which shall be attached a declaration by the secretary or one of the officers of such society: that in making the same the rules of such society respecting the making, altering, amending, and

rescinding rules, or the directions of the Act under which such society was established, have been duly complied with; and if the said registrar shall find that such alterations, amendments, or new rules are in conformity with law, he shall give to the society a certificate in the form set forth in the Schedule to this Act, and return one of the copies to the society, and shall keep the other, with the rules of such society, in his custody, and for which certificate no fee shall be payable to the said registrar, and as against such member or person such certificate shall be conclusive of the validity thereof: and all rules, alterations, and amendments, when so certified as aforesaid, shall be binding on the several members of the said society, and all persons claiming on account of a member or under the said rules; but unless and until the same shall be so certified as aforesaid such rules, alterations, and amendments shall have no force or validity whatsoever.

28. Whenever any friendly society established under this Act or under any of the Acts hereby repealed shall change its place of business, notice of such change, under the hands of two of the trustees or three members and secretary or other officer, shall within 14 days thereafter, be sent to the said registrar.

29. If any person shall give to any member of a friendly society established under this Act or under any of the said repealed Acts, or to any person intending or applying to become a member of such society, a copy of any rules, or of any alterations or amendments of the same, other than those respectively which have been enrolled with any clerk of the peace or certified by the registrar, with a copy of his certificate appended thereto, under colour that the same are binding upon the members of such society, or shall make any alterations in or addition to any of the rules or tables of such society after they shall have been respectively enrolled or certified by the registrar, and shall circulate the same, purporting that they have been duly enrolled or certified under this or any of the said repealed Acts, when they have not been so duly enrolled or certified, every person so offending shall be deemed guilty of a misdemeanor.

30. All rules and tables of any society established under this Act or any of the said repealed Acts, and all alterations and amendments thereof, and all copies thereof or extracts therefrom, and all writings and documents relating to a friendly society, and purporting to be signed by the registrar, shall, in the absence of any evidence to the contrary, be received in all Courts of Law and Equity, and elsewhere, without proof of the signature thereto.

31. When, on the death of any member of a society established under this Act or any of the said repealed Acts, a sum of money not exceeding 50*l.* shall become payable, the same shall be paid by the trustees of such society to the person directed by the rules thereof, or nominated by the deceased, in writing deposited with the secretary (such person being the husband, wife, father, mother, child, brother or sister, nephew

or niece of such member); and in case there shall be no such direction or nomination, or the person so nominated shall have died before the deceased member, or in case the member shall have revoked such nomination, then such sum shall be paid to the person who shall appear to the said trustees to be entitled under the Statute of Distributions to receive the same, without taking out letters of administration in England or Ireland, and without confirmation in Scotland: Provided, that wherever the trustee or trustees of any such society, after the decease of any member thereof, shall have paid and divided any such sum of money to or amongst any person or persons who shall at the time of such payment appear to such trustee or trustees to be entitled to the effects of any deceased member who has died intestate, without having appointed any nominee as aforesaid, the payment of any such sum shall be valid and effectual with respect to any demand from any other person or persons as next of kin of such deceased member, or as the lawful representative or representatives of such member, against the funds of such society or against the trustees thereof; but nevertheless such next of kin or representative shall have his or her lawful remedy for such money so paid as aforesaid against the person or persons who shall have received the same.

32. The trustee or trustees of every friendly society established under this Act or any of the said repealed Acts shall from time to time, with the consent of the committee of management of such society, or of a majority of the members of such society present at a general or special meeting thereof, or in accordance with the rules of such society, invest the funds of such society, or any part thereof, to any amount in any savings bank, or in the public funds, or with the Commissioners for the Reduction of the National Debt, as hereinafter mentioned, or in such other security as the rule of such society may direct, not being the purchase of house or land (save and except the purchase of buildings wherein to hold the meetings or transact the business of such society, as hereinbefore mentioned), and not being the purchase of shares in any joint-stock company or other company, with or without charter of incorporation, and not being personal security, except in the case of a member of one full year's standing at least, and in respect of a sum not exceeding one-half the amount of his assurance on life, such member providing the written security of himself and two satisfactory sureties for repayment, and in case of such member's death before repayment the amount of such advance, with interest, may be deducted from the sum so assured, without prejudice in the meantime to the operation of such security.

33. Every friendly society established under this Act which does not assure the payment in any event of a sum exceeding 200*l.*, or an annuity exceeding 30*l.* per annum, may pay any sum of money not less than 50*l.* into the Bank of England or Ireland, to the account of the

Commissioners for the Reduction of the National Debt, upon the declaration of the trustee or of the trustees, or any two or more of them, that such moneys belong exclusively to the said society; and the cashier of the Bank of England is hereby required to receive all such moneys, and to place the same to the account raised in the name of the said Commissioners in the book of the bank, named "The Fund for Friendly Societies;" and if such declaration shall not be true, then and in every such case the sum of money so paid in on such declaration shall be forfeited to the said Commissioners, and shall be applied by them in the manner directed by any Act or Acts for the time being in force relating to savings banks with respect to the account of such banks; and the regulation of receipts, certificates, or orders concerning savings banks shall be deemed applicable to moneys paid in as aforesaid under the authority of this Act, as if the same had been herein repeated; and every such society, on paying money directly into the bank as aforesaid, shall be entitled to receive receipts bearing interest at the rate of 2*d.* per centum per diem: Provided, that every society which shall deposit any part of its funds in any savings bank, or with the Commissioners for Reduction of the National Debt, shall furnish to the said Commissioners from time to time such accounts as they may require in reference to the funds so deposited.

34. Every Society already established under any of the Acts hereby repealed, which shall have heretofore invested any part of its funds with the Commissioners for the Reduction of the National Debt, shall be entitled to pay into the Bank of England or Ireland in sums of not less than 50*l.*, money received from members on account of assurances made before the passing of this Act, and to receive receipts for the same bearing interest at such rate or rates as such society has hitherto been entitled to receive on account of such assurances; that is to say, for money invested with the Commissioners by any society legally established before the 28th day of July, in the year 1828, on account of any assurance made before the 15th day of August, in the year 1850, 3*d.* per centum per diem; and on account of any assurance effected after that day, 2*d.* per centum per diem; and for money invested with the Commissioners by any society established between the 28th day of July, in the year 1828, and the 15th day of August, in the year 1850, on account of assurances made before the 15th day of August, in the year 1850, 2*d.* per centum per diem; and on account of any assurance effected after that day, 2*d.* per centum per diem; and for money invested with the Commissioners by any society established since the 15th day of July, 1850, the sum of 2*d.* per centum per diem: Provided that the trustees of every society which shall have invested or shall invest any part of its funds with the said Commissioners shall furnish from time to time such accounts and returns as the said Commissioners shall require, and shall satisfy the said Commissioners

that they are legally entitled to receive such interest as aforesaid, and to make such further investment.

35. Where any friendly society shall withdraw money invested by them with the Commissioners for the Reduction of the National Debt, such society shall not be entitled to make any further deposit with the said Commissioners without the consent of the said Commissioners, or of the Comptroller-General or assistant comptroller under them.

36. Whenever it shall happen that any person, being or having been a trustee of any society established under this Act or any Act hereby repealed, and whether he shall have been appointed before or after the legal establishment thereof, in whose name any part of the several stocks, annuities, and funds belonging to any such society, transferable at the Bank of England or Ireland, or in the books of the Governor and Company of the Bank of England or Ireland, or in any savings' bank, is or shall be standing, shall be out of England or Ireland or Scotland respectively, or shall have been removed from his office of trustee, or shall be a bankrupt, insolvent, or lunatic, or it shall be unknown whether such trustee is living or dead, it shall be lawful for the registrar, after receiving an application in writing from the secretary of the society and three members thereof, and upon proof satisfactory to such registrar, to direct the Accountant-General or other proper officer for the time being of the said Governor and Company of the Bank of England or Ireland, or of any savings' bank, to transfer in the books of the said company or of the said savings' bank, such stocks, annuities, or funds, standing as aforesaid, into the name of the trustee who shall be newly appointed, and to pay to him from time to time the dividends thereof; and if one of two or more such trustees shall die, or be removed from his office of trustee, or become bankrupt or insolvent, it shall be lawful for the registrar, on the like application, to direct that the other or others of the trustees shall transfer such stock, annuities, or funds into the name of such person as may have been appointed in his stead, jointly with the continuing trustee or trustees.

37. No copy of rules, nor power, warrant, or letter of attorney granted by any person as trustee of any society established under this Act or any of the Acts hereby repealed, for the transfer of any share in the public funds standing in the name of such trustee, nor any order or receipt for money contributed to or received from the funds of any such society, by any person liable or entitled to pay or receive the same by virtue of the rules thereof or of this Act, nor any bond to be given to or on account of any such society, or by the treasurer or any officer thereof, nor any draft or order, nor any form of policy, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other document whatever required or authorised by or in pursuance of this Act or the

rules of any society, shall be liable to stamp duty: Provided, that no exemption from any of the duties granted by any Act or Acts relating to stamp duties shall be deemed to extend to any society which shall assure the payment of money exceeding 200*l.*, or which shall assure the payment of any money on the death of a member to any person, except executors, administrators, or assigns of such member, or the husband, wife, father, mother, child, brother, sister, nephew, or niece of such member.

38. If any person shall become a member of more than one society, whereby certain benefits shall accrue on account of the same kind of assurance from more than one society, it shall not be lawful for him, or for any person entitled through or under him or by reason of his membership, or for any number of such persons in the aggregate, to receive more than 200*l.*, or, in the case of annuities, 30*l.* a year, from such societies collectively; and in any case where a person shall so as aforesaid be a member of more than one society, and he, or any other person or persons, shall be entitled to any benefit in gross or by way of annuity from any such society, he, or (as the circumstances may require) every such other person shall, before he shall receive any such benefit from any of such societies, make and sign a declaration that the total value of all benefits accruing or which shall have accrued in respect of any one kind of assurance does not exceed the value of 200*l.*, or, in the case of annuities, 30*l.* a year; and it shall be lawful for any society to require any member or any other person who shall be entitled to any such benefit, before he shall receive the same, to make and sign a declaration to the same effect, or that such member was not, when the benefit accrued, a member of any other association; and if any person shall knowingly make any false or fraudulent declaration in any such case he shall be guilty of misdemeanor.

[To be continued.]

## COUNTY COURTS' RETURN.

REFERENCES FOR ARBITRATION UNDER  
17 & 18 VICT. C. 135, SS. 3, 6.

In the following Circuits references have been made:—

No. 2.—One case, amount in dispute 348*l.*

No. 3.—Three cases, average amount in dispute 97*l.* 10*s.* 9*d.*

No. 4.—Two cases, average amount in dispute 426*l.* 9*s.* 11*d.*

No. 12.—One case, amount in dispute 54*l.*

No. 14.—One case, amount in dispute 37*l.* 10*s.*

No. 30.—Three cases, average amount in dispute 152*l.* 13*s.* 4*d.*

No. 46.—Two cases, average amount in dispute 36*l.* 7*s.* 2*d.*

No. 58.—One case, amount in dispute 78*l.* 17*s.* 6*d.*

In the following Circuits references have been made but have not been heard:—

Nos. 6, 8, 25, 31, 50, 53, one case each.

Nos. 11, 54.—Two cases each.

In the remaining 44 Circuits there have been no references.

## LAW OF ATTORNEYS AND SOLICITORS.

### PRINCIPLES AND PRACTICE ON TAXATION OF COSTS.

THIS was a petition to review the taxation made by the Taxing Master of a bill of costs delivered by Mr. Catlin and complaining of the disallowance of various items.

The *Master of the Rolls* said:—

"It is admitted, on both sides, that this Court can only be called upon to determine on the propriety of allowing or disallowing items which involve some principle, and not where a question only of *quantum* arises.<sup>1</sup> It is, however, in many cases, a matter of considerable difficulty to determine whether the disallowance of an item is a question of principle or a question of *quantum*.

"Mr. Catlin alleges that the disallowances he complains of are of items which involve a material principle. I have gone through these items, and propose to express the best opinion I have been able to come to on each. \* \* \* The first item complained of is, that the said Master has disallowed a charge of 5*s.* for copy and service of an order to change the solicitor, which order was served on the agents of the then solicitor in London, who had the conduct of, and were daily and actively proceeding in, the cause of *Buckley v. Cooke*. I think that Mr. Catlin is in error as to this item. The service on the agent of the order to change is allowed for; the order in respect of which the 5*s.* is charged seems to be another order, viz., 'to deliver a bill,' which requires to be served personally, and for which personal service is allowed. Service on the agent of this order would be a mere nullity, and was, I think, properly disallowed.

"The next item, the disallowance of which is complained of, is 2*l.* 2*s.* for perusing and considering a voluminous bill of costs, extending over 190 folios. This was the bill of costs of Mr. John Cooke, the former solicitor, which had been referred for taxation. The bill was not taxed, but by arrangement 60*l.* was deducted from the amount of the bill, which was 709*l.* 19*s.* 6*d.*, the balance paid to Mr. Cooke, and the papers handed over. Mr. Catlin alleges, that his reason for doing this was, that 60*l.* was as much as would have been taxed off, that he thereby saved the per centage on taxation and the costs of taxation, and obtained the

papers (which were of great importance to his client), some months earlier than he could have done had he taxed the bill; and that in order to enable him to accomplish this end, it was necessary for him to read the bill of costs, and that 2*l.* 2*s.* was a reasonable charge for this. Mr. Lewin in his affidavit says, 'I objected to the allowance of this 2*l.* 2*s.*, on the ground that I did not consider the settlement of the bill, without taxation, at all for the benefit of my client,' and he proceeds to point out that large sums would have been taken off on a taxation. I observe, also, that the next item to the 2*l.* 2*s.* is 6*l.* 10*s.* for making a copy of this bill, which is allowed, and that various attendances to effect the settlement of the bill were also allowed. I am of opinion that I cannot try the question whether this compromise of Mr. Cooke's bill was a fit one or not. Mr. Buckley might try that question in an action against Mr. Catlin, but I think that no proceeding having been adopted to try that question, I am compelled to hold that it was proper until it is impeached, and that the Taxing Master stood in the same position as I stand in this matter. It is obvious that there may be many reasons which may make it expedient for a client to compromise the claim of a previous solicitor, rather than tax the bill, although the sum allowed be less than what would be obtained on a taxation. The expenses of taxation are a part of this, the delay which would be occasioned is also another material consideration, and it is to be observed that this occurred so near the Long Vacation, that the matter must necessarily have stood over till the month of November following, unless a compromise had been effected. Assuming the compromise to have been proper, which I think that I am bound to assume, I do not see how it could have been effected, unless by previously reading and considering the bill itself. If this item was disallowed on the ground that the sums allowed, which I have already stated, were sufficient for the service rendered, this appears to me to be, to some extent, judging of the propriety of the compromise, which I think the Taxing Master had no jurisdiction to do. I think, therefore, that this item ought to have been allowed.

"The next item I refer to is, that the said Master disallowed the sum of 1*l.* 6*s.* 8*d.* charged for drawing out a scheme of the property and the holding of the tenants, which was necessary for the receiver, on the ground that such item is not chargeable in such bill, but that it formed part of the receiver's costs, in which case Mr. Catlin contends that it would be a ground for such item being struck out of, and not taxed off from such bill.<sup>2</sup> I think that this charge is properly disallowed. I cannot think that it would be costs even in the receiver's bill (as Mr. Catlin suggests), who may find it necessary to make out such a scheme, as being essential for the due performance of his duties, but these duties are paid for by a per-centage.

<sup>1</sup> *Alsop v. Lord Oxford*, 1 Myl. & K. 564.

<sup>2</sup> *In re Clark*, 13 Beav. 173.

The next items, the disallowance of which is complained of, are the three items charged on page 8 of bill, which are thus stated in Mr. Catlin's petition:—

	£	s.	d.
"1853, June 9.—Having received recognizance from Mr. Bury, attending for fresh appointment to carry in same . . . . .	0	6	8
Copy and service on Messrs. Milne & Co. . . . .	0	2	6
Ditto on Mr. Cuff . . . . .	0	2	6

"These items were taxed off by the Master, but were proper and occurred in the following manner:—The Chief Clerk having appointed a day for the receiver in the cause to bring the recognizances, in consequence of one of the sureties being in Ireland, his affidavit could not be obtained, and with the said Chief Clerk's assent, the matter stood over generally, with directions for your petitioner, as soon as he could get the recognizance signed by the surety, to get a fresh appointment and day named, and give notice to the opposite solicitors, which was accordingly done, and such items are properly chargeable and ought to have been allowed."

"I dissent from Mr. Catlin's view, and I think that these items were properly disallowed. The Chief Clerks in the Judges' Chambers have made arrangements by which they adjourn the proceedings on summonses from time to time, and require all parties to take notice of such adjournments. To allow a charge for notices of adjournment would be in effect to re-establish the old system of warrants, with the abuses attendant thereon. When the Chief Clerks consider formal notice again necessary, they issue a fresh summons, and it is for the purpose of conforming with these arrangements, that the Taxing Master must properly disallow these charges for notices of adjournment."

"The next item I refer to is thus stated by Mr. Catlin:—'That on the introduction of the item paid for by certificate (1*l.* 2*s.*) in page 14 in bill, No. 1, the petitioner ought to have been allowed, beside such payment, attending to bespeak and for same 6*s.* 8*d.*, and attending filing same 6*s.* 8*d.*, which ought to have been introduced.' This seems to me to rest on a misapprehension by Mr. Catlin. The 1*l.* 2*s.* is introduced in page 14, but the 6*s.* 8*d.* for the attendance to file, and the 2*s.* 6*d.* for the office copy was charged in the bill, page 20, and allowed. I am also assured that there is only one fee of 6*s.* 8*d.* properly allowable on this transaction:—'Attending for and to file certificate, 6*s.* 8*d.*'"

"The next item I refer to is this:—'That the petitioner was employed to peruse and obtain the execution of the said Sarah Buckley to a lease granted by her to a Mr. Bannough, which work was performed and done for and on behalf of the said Sarah Buckley, and at the time of the service of the order to tax and the taxation, the said item of 2*l.* 2*s.* (the charge

for perusing and executing such lease properly incurred), was still outstanding, but the said Master disallowed the same, because, as he alleged, the petitioner ought to have obtained it, and deducted such amount.' I am disposed to think, under the circumstances of this case, that this item should not have been taxed off, but should have been balanced by a credit in the cash account for the money received. The client certainly was the original debtor, and though the money was to be paid by a third person, yet if it had not been paid by him, Mrs. Buckley would have been liable to pay this money to Mr. Catlin, and it had not been paid when the client left her solicitor, and I think, therefore, that at that time she was properly charged with this item."

"The next items to which I refer, are those relating to the delivery of papers. The first item, the disallowance of which is complained of by Mr. Catlin, is that when Mrs. Buckley's agent applied for the title deeds, a list of the deeds, and of the parties named, was made out by Mr. Catlin, who obtained a receipt for them and delivered them over, for which he charged 13*s.* 4*d.* This I think was properly disallowed; it is done for the use and security of the solicitor and not of the client, and it has, I am informed, been always usual to disallow it, unless when consented to."

"The other items on this subject are thus described by Mr. Catlin,—'That your petitioner charged in the said bill, No. 1, for affidavits and schedule of papers, 2*l.* 1*s.* 8*d.*, such papers being directed to be delivered over on oath. That such affidavit with schedule is 43 folios. That such charge ought to be allowed at the following, viz:—'Drawing affidavit and schedules, 2*l.* 2*s.*; copy to swear, 13*s.* 4*d.*; attending to swear, 6*s.* 8*d.*; paid oath, 1*s.* 6*d.*'"

"Mr. Catlin draws this distinction, which he contends to be the practice prevailing on this subject, and which seems to be reasonable:—'If the client simply require the deeds and papers to be delivered over, no affidavit need be made, and in that case no affidavit can be charged for; but if the client require that the papers should be delivered over on oath, then the affidavit is for the client's advantage, and he ought to pay for it. But then arises this difficulty, on which I have felt considerable embarrassment, the papers not having been delivered, the affidavit is not made when the bill is delivered, nor when it is taxed, therefore, the work is not actually done, but it is something to be done thereafter, and therefore it should seem not properly to be included in a bill for the work then done. Against this, however, is to be put this difficulty, that if done thereafter, the solicitor cannot get paid for it, unless by the consent of the client:—1st, because, as he is no longer the solicitor of the client, he cannot retain the deeds and papers until the expense of the affidavit is paid; inasmuch as the order of the Court having been made to deliver over the papers on oath, that order might be enforced by attachment, on payment of the costs due on the Master's cer-

tificate of the taxation. Neither could the solicitor bring an action for this amount, the answer to which would be, that it had been settled by the taxation of the bill in Chancery, and that the manner of obtaining payment of it must be in that course or not at all. As the client may compel this delivery on oath, and has obtained such an order, I see no way in which the solicitor can be paid for it, except by charging it in his bill, although it be for work which is to be done, because the Court will afterwards compel the performance of that work, although (unless included in this bill), the Court cannot compel the proper payment being made for it. This seems to be anomalous, and I have on the whole come to this conclusion after some hesitation:—that whatever is proper in amount ought to be allowed in respect of these items.

"The next items, the disallowance of which is complained of, are thus stated by Mr. Catlin:—'That the following items charged in the said bill (that is to say),—1853, June 27, Mr. Shadwell, counsel, having sent his clerk requesting my attendance, &c., 6s. 8d.; June 29, attending Mr. Wainwright, the Taxing Master, to obtain his certificate for the extension of time to tax Mr. Cooke's bill, as the order directed that the Master should make his report within a month, and obtained his certificate, 6s. 8d.; July 1, attending Mr. Shadwell with statement, &c., 6s. 8d.; July 8, attending Mr. Shadwell of counsel, &c., &c., 6s. 8d.; July 11, attending Mr. Shadwell thereon, when he stated that he was afraid there was not sufficient evidence to set the same aside, and he wished to have a consultation with Mr. Rolt thereon, and it was arranged that I should lay a case before Mr. Rolt and himself thereon, 6s. 8d.; Nov. 1, attending Mr. Stubbs in long conference as to the position of this suit, and the consultation had with Mr. Rolt and Mr. Eddis thereon, and the course they considered it advisable to take, 6s. 8d.;—were proper, were performed, and ought to have been allowed, and not taxed off.'

"It is urged by Mr. Catlin, that counsel frequently send for the solicitor to confer on various matters of importance to the client, but do not charge any conference fee; but that the time of the solicitor is taken up, and that he ought to be allowed for his attendances. After some hesitation, I think that the first five of these items were properly disallowed. It is, I am informed, the invariable practice to strike them off, and that it has never been considered right, and that it is not usual to charge for those conversational attendances. I am also induced to believe, that it might lead to dangerous results to alter the practice in this respect. The last item seems to be different, and I find it difficult to come to an opinion as to the propriety of this charge. It would at first sight seem proper to be allowed; but if, as was probable, it was struck off as excess, it may be properly disallowed.

"The next item was not much insisted on by Mr. Catlin. It is thus stated in his pe-

tition:—'That the letters and attendances with admissions on the plaintiff's and defendant's solicitors of 6s. 8d. and 6s. 8d. page 27 of bill No. 1, are usual and proper charges, and ought to be allowed, and were duly and properly performed.' I think that these are properly disallowed. As far as I can understand the matter, they are unusual charges and are struck off for excess.

"The next item is thus stated, viz.:—'That in your petitioner's bill in such causes, in consequence of the brief being left at the Registrar's to pass order, and the same not being forthcoming, a blank was obliged to be left as to such brief. That carrying out the principle adopted as to additions as well as subtractions, your petitioner applied to the said Taxing Master to insert the copy of answer, which he refused to do, but after such refusal and without the knowledge of your petitioner, the said Master has inserted and allowed in such bill a charge for copy pleadings 11. 3s. 4d., but did not allow any instructions for brief, which, under the 4th General Order of 7th August, 1852, your petitioner is entitled to, amounting to 11. 1s.' I conceive Mr. Catlin to be in error with respect to this fee of 11. 1s. It was first given by the orders of Lord St. Leonards to compensate for the printing of bills, and was intended as compensation for the old fee of 'abbreviating the bill at 4d. per folio,' which by printing of course ceased. This fee attaches immediately on the replication being filed, at which time Mr. Catlin was not the solicitor of Mrs. Buckley. It is probably charged by the gentleman who was then her solicitor, but if not, I think that Mr. Catlin cannot charge it.

"The next item is the disallowance of a charge for perusing affidavits in the lunacy of 21. 2s. Mr. Catlin states the matter thus in his petition:—'That the same or part of them were necessary evidence in the said cause of *Buckley v. Cooke*, and were agreed to be admitted by the defendants, Buckley and others, as evidence in such cause, and it became essential that your petitioner should carefully peruse the same, which your petitioner did, and devoted a considerable time for that purpose, and has charged 21. 2s. for so doing, which is a fair and proper charge, and ought to have been allowed, but has been taxed off.' In order to satisfy myself of the nature of this work, and that it was really performed, I sent for the two documents mentioned in these items in the bill of costs, under the dates of 20th of October, 1853, and 12th of November, 1853, which are thus described:—'Drawing further observations on case for counsel as to evidence to support case to set aside both settlements, six sheets; instructions for admissions; drawing same fol. 40; fee to Mr. Eddis.'

"I find from these that the question of the introduction of these affidavits was considered by Mr. Eddis, who drew these admissions, and that a careful list of them and the subjects of them was prepared by Mr. Catlin for this purpose. In so doing he must have perused and considered them, and I think that he ought to



be allowed for his time and trouble in this respect, and that the sum of 2*l.* 2*s.* charged by him is not an improper or exorbitant charge for this purpose.

"A further subject complained of by Mr. Catlin is, that he obtained a certificate from Mr. Bloxam, the Vice-Chancellor's chief clerk, allowing 13*s.* 4*d.* for attendances, for which in his bill Mr. Catlin had charged 6*s.* 8*d.*, and that although the Master increased one of these attendances to 13*s.* 4*d.* according to the certificate of the chief clerk, he refused to increase the other in a like manner. It is, I am informed, well established in practice that where a solicitor has delivered a bill of costs to his client, and proceedings between the parties have been taken to tax it under the Statute, no alteration can be made in it, except by consent." The reason and justice of this is obvious, and it appears to me to rest not less on principle than on practice. If one species of alteration be made, any other might. Who is to determine what alteration might or might not be made? And if any alteration may be made, it is clear that a bill could be altered to meet the turn which the taxation was taking. In my opinion, the Master has no jurisdiction in taxation to permit any alterations or amendments to be made in the bill, except such as the client may consent to. I am of opinion therefore that, unless consented to (which was not done), the Taxing Master had no authority to increase these items. But had it been otherwise, it would have been extremely difficult to allow a petitioner to found his application to the Court on his own omission.

"I have now, I believe, gone through all the items complained of by Mr. Catlin, and have expressed the opinion I have come to on all. I feel satisfied that many of the materials before me were not before the Taxing Master, and that the explanation given to me of many of these items was not given to him; and that on the other hand, Mr. Catlin has misunderstood in many cases the principles and grounds on which the Master proceeded. I trust that some system may shortly be adopted by some orders of the Court, by which this may be obviated for the future. I have sufficiently indicated my view of the case, and I trust that the solicitors on both sides will be able, with the assistance of the observations I have made, to settle the amount at which the bill ought to be taxed.

"I am very reluctant to send this matter back again to the Master, and what I have stated ought to enable the parties to settle the amount. I have purposely refrained from making any calculations as to whether the extent to which the items restored in Mr. Catlin's bill will affect the costs of the taxation. I have endeavoured to consider each case solely on its own merits, and without regard to the re-

sult. Of course there will be no costs of the petition before me on either side." *In re Catlin*, 18 Beav. 508.

## LAW OF COSTS.

### ON MAKING JUDGE'S ORDER A RULE OF COURT.

By a Judge's order, the defendant was ordered within three days to obtain the discharge of the plaintiff in the action, in which she was detained at the suit of one John Minton, by paying the amount of debt and 50*l.*, agreed costs of the action, and also within 14 days, at his own expense, to take the necessary proceedings to obtain the vacating of the vesting order in the Insolvent Debtors' Court, obtained by Minton against such plaintiff, "and thereupon, that all proceedings in this cause shall be stayed."

On motion, the order was made a rule of Court *with costs*, as, although the first two branches of the order were clearly mandatory on the defendant, the third was for his benefit, when he had performed the other two. *Crowther v. Crowther*, 16 C. B. 177.

### OF WITNESSES AT ASSIZES.

On the trial of a cause at the assizes, and pending the examination of the plaintiff, who was the first witness (at about 3 P.M.), it was agreed that it should be referred—the costs of the cause to abide the event, and the costs of the reference and the award to be in the discretion of the arbitrator. The arbitrator proceeded with the reference the same evening at 6 o'clock, and had heard all the evidence by half-past 11, and ultimately made an award in the defendant's favour, and directed the plaintiff to pay the defendant his costs of the action, and that each party should bear his own costs of the reference, and a moiety of the costs of the award.

It appeared that one of the defendant's witnesses did not arrive at the assize town until about half past 10 P.M., whilst the reference was proceeding.

*Held*, that he was not properly chargeable as a witness in the cause.

*Held* also, that where the trial of a cause at the assizes is not over until 3 P.M., the witnesses may reasonably be allowed the next day to return home, although their place of residence be accessible by trains on the same evening. *Fryer v. Sturt*, 16 C. B. 218.

<sup>3</sup> See *Loveridge v. Botham*, 1 Bos. & P. 49; *In re Carven*, 8 Beav. 436; *In re Wells*, *ib.* 416; *In re Walters*, 9 Beav. 299; *Matchett v. Parkes*, 9 M. & W. 767.

## EARLY CLOSING ASSOCIATION.

## SATURDAY HALF-HOLIDAY.

A GREAT meeting of the promoters and friends of this movement was held on the 16th August, at the Guildhall, for the promotion of Saturday half-holidays throughout all departments of business, where practicable, and the earlier payment of wages on Saturdays. There could not have been less than 3,000 to 4,000 persons present, the hall being crammed, and many retiring because they could not hear the speakers at the further end of the hall. The greatest possible order prevailed throughout the whole of the proceedings. On the motion of Mr. Ambrose Moore, Sir James Duke, Bart., M. P., was unanimously called to the chair.

The *Chairman* said, this was a question which affected both the employed and the employers; there was a general feeling in the large houses of business in the metropolis among the principals, that they should give every possible facility to those who were employed in their establishments, to enable them to have that amount of relaxation and recreation which were so essentially necessary to the promotion of health and of their mental improvement. He need not remind them that this great metropolis was not only annually, but daily, increasing in magnitude. A friend of his, for whose judgment on questions of this kind he entertained great respect, had stated, upon being examined before a Committee of the House of Commons, when asked a question with reference to the advantages which railways offered to people going out of town on excursions, that he only regretted that the hours of labour did not close at two o'clock on Saturdays; that the week was so pushed into Sunday, that the people had scarcely time for recreation, or innocent enjoyment on that day, and his opinion was, that if labour closed at two o'clock on Saturdays, the moral result would be indescribably great. Men now saw that it was not only justice to those whom they employed, but also advantageous to themselves, to assent to the principle; because he was satisfied that if they consented to the wish so unmistakably expressed, the employed would give their increased energies to the promotion of the interests of their employers. The question was one which must be carried by time, and he was sure from the good feeling of the principals in trade who were before them, they would very soon accomplish their object. He was happy to see present so many respected gentlemen connected with the city, especially such a gentleman as his friend Mr. Hubbard, the late deputy governor of the Bank of England. He had received a very interesting letter from Lord Ebrington, stating his regret that, being compelled to go to Paris, he could not attend the meeting; but stating his anxious wish to co-operate in any way he could in the movement.

Mr. *Liswall*, the hon. secretary, said, he had to read several letters which he had received. The first was from Mr. Gregory, of Bedford

Row, solicitor, who had expressed his sympathy with the objects of the meeting, and regretted that, being compelled to leave town, he was unable to attend. He adverted to the difficulty in which the Legal Profession were placed, in consequence of the feelings of the Judges, who were unwilling to give up any hours which they considered the public had a right to demand from them in the discharge of their judicial functions. Mr. Bennett's letter bore testimony to the good practical working of the system which he had adopted for five years, of closing at one o'clock on Saturdays. The Rev. Thos. Binney expressed his sympathy with the object of the meeting, and recommended that Saturday should be made a one-shilling day at the Crystal Palace. The Rev. Henry Allen, and Alderman Salomons, in their letters of apology also expressed the deep interest they felt in the objects of the meeting. The secretary then read a statement detailing the origin and progress of the society; which also urged the closing of business and the payment of wages at an early hour on Saturdays.

J. G. Hubbard, Esq., moved the first resolution—"That early closing on Saturdays having been already adopted in Edinburgh, Glasgow, and the principal towns in Scotland, also in Liverpool, Manchester, Leeds, and other places in the North of England, as well as by some important branches of business in London; and the result having proved to be highly beneficial to large classes of society,—socially, mentally, and physically, added to the most important effect of tending materially to a better observance of the Lord's Day,—these facts afford safe ground for assuming that such a measure must prove a national benefit, and that this meeting has therefore the greatest confidence in recommending it for general adoption." This movement he begged to say was not only originated, but was willingly adopted by those who were chiefly interested, and the best thanks of those present were due to those who had given a further impulse thereto. If the half-holiday on Saturdays were granted, the employed would give increased energies to their labour and the interest of their employers. Time had been when holidays were far more numerous than they were now; but the circumstances and influences of by-gone periods had much curtailed the holidays of the poor. He thought it would be advantageous if some of the annual festivals were still observed, and especially that of Ascension-day. He desired to see the Lord's-day observed, but he did not think it was a day on which men should do nothing but pray. An acquaintance with the works of men, and more especially with the marvellous works of God, was legitimately open to those who sought refreshment from the toils of the week.

The Rev. Dr. Gregg seconded the resolution. Amongst other eloquent remarks, he said,—“It is remarkable, how often it happens that the wisdom of manhood should be scarce sought else than a reversion to the simplicity of earlier days. Who does not recollect with delight that

a half-holiday on Saturday was a schoolboy dispensation? Full business on that day would have been considered as unnatural as any business on the Lord's day would have been thought profane. The arrangement was as essential for the children as for the master. All had to brush up for the great day, as for a day of delight, and honourable—rendered more delightful and more honourable from the carefulness devoted to prepare for it. An Englishman's Sabbath is his glory and his crown. We mistake its nature if we regard it as a small matter. It is because it is a great matter, and viewed as such, that I see before me the magnificent assembly which I have now the honour to address. The object is that due leisure on Saturday may leave to Sunday its proper functions. We want it for the purpose of retiring within ourselves—of drinking in wisdom from its very source, which, thank God, is in every man's hand. As then the Sabbath is this great and glorious thing, and its due improvement the very hinge on which the happiness of existence depends and turns, that we may have it happy, pious, and profitable, we must not rush into it like a horse into the battle, but devote some labour and some pains to antedate it by corresponding antecedents. Our resolution is eminently practical: it bespeaks the metropolis as rather carefully following the provinces, than, in a manner which might possibly be rash, leading them. It tells us that early closing on Saturdays has been already adopted in Edinburgh, Glasgow, and the principal towns of Scotland, as also in Liverpool, Manchester, Leeds, and elsewhere; and that the result has proved beneficial to large classes of society, socially, mentally, and physically, as well as conducive to the better observance of the Lord's-day. Thus have we experience to confirm what principle and feeling would commend. I have for a series of years been a watchful observer of the progress of society in this great emporium, and have with hopeful recognition seen that it has been onward and upward. Who that can recall a score of years since, and remember the floods of revolutionary malignity, bold unbelief, and daring licentiousness, which then degraded the cheap and teeming press of the metropolis, will not admit that there has been a change for the better. Amelioration, and not deterioration, is the law, and it is that law of progress that has embodied our Committee, and created this great assembly."

Mr. John Robert Taylor (Law Stationer) moved the next resolution—"That this meeting considers that the hour for closing on Saturday, so far as is practicable, should be 2 o'clock; believing that the Government, Law, Public, and other Offices, and Wholesale Houses generally, may, compatibly with public convenience, be closed at that hour;—they therefore strongly urge the adoption of this measure." About 12 months since 236 of the largest legal firms, feeling anxious that this principle of closing business at 2 o'clock should be carried out, memorialised the Judges, and all the

Judges except one were in favour of the movement; and he trusted that when that learned Judge saw that public opinion was in its favour he would give way to it. There were 10,306 solicitors who paid duty at Somerset House; in the country there were about 6,827. If they took an average of only two or three clerks to each, though some firms had as many as 50 clerks, he left it to the meeting to imagine the large number of men who would be set at liberty on the Saturday at a rational hour. Under the present system, documents would be handed in by the chief clerks of solicitors' offices late on Saturday, the copies of which were required to be furnished, corrected, and ready, early on Monday. The consequence was that many men were compelled to work on the Saturday night and on the Sunday to get through their work; and yet on the Monday and Tuesday they had frequently nothing to do. But their energies were exhausted. The Lords of the Treasury should be addressed, because unless the Government offices were closed at an early hour the lawyers' offices could not be closed.

Mr. G. H. Tarleton (the Secretary of the Young Men's Christian Association) seconded the resolution. Among other points, he quoted the case of the great needle-makers, Messrs. Milward, who had long commenced the practice of closing at six o'clock every evening, and every Saturday at two o'clock; and they stated that their men did more work in the time, and executed it better, than the men of any manufactory in the neighbourhood.

The resolution was put and carried unanimously.

Mr. Ambrose Moore (whom the Chairman introduced to the meeting as the gentleman who had taken the chair at the first meeting in favour of this movement) came forward to propose the next resolution—"That this meeting strongly, but respectfully, recommend to all employers to pay their workpeople either on Friday, or early on Saturday morning, as a measure both advantageous to the workpeople themselves, and materially tending to promote the closing generally of retail houses at an earlier hour on Saturdays." The committee sought to give freedom for Englishmen to observe the Sabbath in such a manner as they should think best. He proceeded to show the enormous evils which resulted from the practice of paying wages late on Saturday night.

Mr. Deputy Holt seconded the resolution. He had no idea of taking part in this movement till he had reached the hall that day, when he attended at the suggestion of his friend, Mr. Taylor. He begged to express his cordial sympathy with the objects of the meeting, and his readiness to forward those objects by every means in his power.

The resolution was then put and carried unanimously.

Mr. Bailey (of the firm of Messrs. Bailey,

<sup>1</sup> This number includes Proctors, Notaries, and Conveyancers.

Shaw, Smith, and Bailey, Solicitors) moved the next resolution—"That the foregoing resolutions be respectfully submitted to the Right Hon. the Lord High Chancellor of Great Britain, to the Lord Chief Justices and the other Judges of the realm, to the Lords Commissioners of the Treasury, and the heads of other Government departments, and be brought under the consideration of every profession, business, and wholesale trade in London."

Mr. Bower (of the firm of Bower, Son, and Cotton) seconded the resolution, and observed that it was in the power of the employers and employed to change the hours of business, but not so with the lawyers.

The resolution was then put and carried unanimously.

Mr. Williams (of the firm of Winter and Williams) proposed, and Mr. Castle Smith (of the firm of Smith and Minet) seconded the motion of thanks to the Chairman.

## POST-OFFICE REGULATIONS.

### TRANSMISSION OF NEWSPAPERS TO BRITISH COLONIES AND FOREIGN COUNTRIES.

HENCEFORTH it will not be necessary that newspapers sent abroad, whether to the *British Colonies* or to *foreign countries*, should bear the impressed stamp (the old newspaper stamp), but as at present, a postage of *one penny* must be prepaid (either by means of a postage label or in money) on every newspaper sent to a British Colony, with additional postage (according to the table in instructions No. 45) when the newspaper passes through a foreign country.

The postage on newspapers to foreign countries remains the same as given in instructions No. 45; but, as already stated, it is no longer necessary that the newspaper should bear the impressed stamp.

In future the impressed stamp will be required only in cases of repeated transmission of the same newspaper in this country, though it will, of course, be available also for single transmission in this country.

In the transmission of newspapers *abroad* (whether to the colonies or foreign countries), the use of the *impressed stamp* will entirely cease; it will neither be required nor will it count as postage, as it will be presumed that where it is employed it has already served for the transmission of the newspaper in the United Kingdom.

From these regulations it will necessarily follow:—

1st. That every newspaper going abroad must hereafter have the postage to which it is liable represented by adhesive postage stamps or paid in money.

2nd. That a newspaper, whether published with or without the impressed stamp, will be placed in the same position for transmission abroad.

3rd. That the impressed stamp will hereafter

apply only to transmission and re-transmission within the United Kingdom.<sup>1</sup>

### BOOKS, &c., TO WESTERN AUSTRALIA.

On and from the 1st September next the provisions of the Colonial Book Post, as laid down in instructions No. 10 of this year, will be extended to books transmitted by private ship direct, or by packet, *viâ* Melbourne, between the United Kingdom and the colony of Western Australia.

Upon book packets for the above-mentioned colony, the rates of postage will be as follows, viz.:—

For a packet not exceeding  $\frac{1}{2}$  lb. in weight 6d.

For a packet exceeding  $\frac{1}{2}$  lb. and not exceeding 1 lb., 1s.

For a packet exceeding 1 lb. and not exceeding 2 lbs., 2s.

And so on, increasing 1s. for every pound or fraction of a pound.

(Signed) ROWLAND HILL, *Secretary*.

## PROFESSIONAL LISTS.

### PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recoveries' Act, with dates when gazetted.*

Hills, Thomas, Milton next Sittingbourne, in and for the county of Kent. Aug. 10.

Howell, David, Machynlleth, in and for the county of Montgomery. July 27.

Lock, Robert, Pembroke, in and for the county of Pembroke. July 27.

Matthews, George, Newton, in and for the county of Montgomery. Aug. 10.

Woodbridge, Charles, Uxbridge, in and for the county of Middlesex. Aug. 17.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 24th July, to 17th Aug., 1855, both inclusive, with dates when gazetted.*

Crowdy, William Morse, Alfred Southby Crowdy, and James Copleston Townsend, Swindon, Attorneys and Solicitors. Aug. 14.

Oehme, William Daniel Henry, and William Hovenden Thacker, 124, Bishopsgate Street Within, City, Attorneys and Solicitors. Aug. 10.

## NOTES OF THE WEEK.

### LAW APPOINTMENTS.

Mr. Francis James Coleridge, whose appointment as Clerk of Assize on the Midland Circuit, in the place of the late Mr. Collisson, was recorded at page 270, *ante*, has appointed Mr. John Cooke (of the firm of Cooke and

<sup>1</sup> For the regulations relating to newspapers posted *within the United Kingdom*, see p. 245, *ante*.

Beales) of Mitre Court, Temple, Clerk of Arraigns and Agent in London for the transaction of Circuit business.

Mr. Christopher Fairer, Solicitor, has been appointed Clerk to the Justices for the West Ward, Westmoreland, in the room of Mr. Henry Holmes, deceased.

Mr. James Eldridge, Solicitor, has been appointed Election Auditor for Newport and the Isle of Wight.

The following gentlemen have been appointed Revising Barristers for the present year:—

Mr. Gaunt, for North Cheshire.

Mr. Foulkes, for South Cheshire.

Mr. Beavan, for Flintshire.

Mr. Wilkin, for Denbighshire.

Mr. Wynn, for Anglesey and Carnarvonshire.

Mr. Denton, for Merionethshire and Montgomeryshire.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*In re John Collins, a Solicitor, &c.* Aug. 2, 1855.

**SOLICITOR.—STRIKING OFF ROLLS, FOR CONSENTING TO PAY MONEY OUT OF COURT WITHOUT CLIENT'S AUTHORITY.**

*A sum of money was standing to the account of a tenant for life and her children, one of whom mortgaged his share, and another joined as surety. A petition was presented to the Court—the tenant for life surrendering her life interest—by the solicitor for the payment of the fund out of Court, and the mortgagee and the other party (one of the other children and a married woman) appeared by counsel and consented to such payment. These consents were given without authority: The solicitor was ordered to be struck off the rolls of the Court.*

THIS was an order on Mr. John Collins, a solicitor of this Court, to shew cause why his name should not be struck-off the roll of Solicitors. The facts sufficiently appear in the judgment.

Cairns shewed cause.

Taylor for the Solicitor to the Suitors' Fund; and Speed for the parties to the suit of *Wheatley v. Bastow*, in which the misconduct complained of occurred, were not called on.

Lord Justice Bruce said:—"The confidence placed by this Court in its officers, invests the solicitors with a power over the property intrusted to the Court, which is of a very important and extensive description. No doubt it is a confidence liable to abuse, but I am happy to believe that very few instances of its abuse occur. When it is remembered in what form and in what manner transfers of the various funds, to so great an amount, standing in the name of the Accountant-General of this Court, are obtained, it is obvious that if the execution of the duties of solicitors as far as regards this were not carefully watched, ruin of the most grievous description must ensue, and families might be deprived of the whole of their means of subsistence, and of maintaining their position in life, so far as property was concerned. Persons interested in the funds are considered as represented by their solicitors, they are bound by their consent, the Court acts on it, and the funds are disposed of accordingly. It is evident that if the Court

were to view questions of the description of the present with too great indulgence, it would fail in the performance of a most important duty. Here Mr. Collins was the solicitor of a gentleman of the name of Barrett, and also of his own niece, Mrs. Wheatley, and of her mother also, and also I am willing to believe of her husband. The persons mentioned were interested in a fund in the Court of Chancery, and Mr. Collins, without warrant, without authority, and without any permission which could by any reasonable being have been possibly considered to justify or even to render excusable his act, instructed counsel on behalf of Mr. W. Bastow and Mr. and Mrs. Wheatley, some of the parties, to consent to the abstraction of the fund for purposes alien and opposed to their interests. Mr. W. Bastow was at that time absent from England, and it was said that when informed of what had been done he disapproved of it, but seems, indeed, to have been, in a sense, satisfied by Mr. Collins' acknowledgment that he had done wrong, and to have received some compensation or security at his hands; but it must be remembered that Mr. W. Bastow had ceased to be the absolute owner at this time, and that his rights had vested in the trustees of his marriage settlement, whose rights and interests were not communicated to the Court, and were not affected to be represented; and for this the apology offered is that, though the marriage settlement was prepared in his own office, and he was the solicitor intrusted, instructed, and employed for the purpose of preparing it, Mr. Collins was not aware of the nature of the settlement and of the property included in it. For a civil purpose he would make such an assertion ineffectually. Perhaps for a purpose merely criminal, in the ordinary sense of the term, he might make it effectually. Whether for the purpose of the present application, which is to remove him from the confidential position of a solicitor of this Court, he could make it effectually I may have some doubt, but I am willing it should be taken that, though he ought not to have been ignorant, he was so. I am sorry to say, however, that that does not substantially improve his case. Mrs. Wheatley was his niece; he had probably been very kind to her, as was his duty, though it is a duty which some men do not perform like other duties of imperfect obligation. Mr.

Collins states that this arrangement was the subject of conversation between him and the ladies of the family, and he says he is convinced, from the terms on which Mrs. Wheatley and her husband were, Mrs. Wheatley would have informed him. Mr. Collins—and it is so far creditable to him—does not assert that he ever communicated the matter to Mr. Wheatley. I find it impossible to believe that, if Mr. Collins had supposed that Mr. Wheatley would have consented, or that the transaction was proper, he would not have communicated it to Mr. Wheatley. I do not believe it. Mr. Wheatley is still living, and has made statements in the case upon which the rule before us was obtained. There is no reason to suppose him indisposed towards Mr. Collins, his wife's uncle. He has not come forward as a witness on his behalf on this occasion; nor has Mr. Collins asked Mr. Wheatley to be a witness. Under these circumstances the conclusion is irresistible. Both consents were most improperly given—given without authority—I am sorry to say given without any ground on which Mr. Collins could, as a reasonable man, believe that he could represent that he had instructions. Whatever condonation there has been on Mr. Bastow's part, it is no condonation so far as this Court or society are concerned. There has been no condonation on the part of Mr. Wheatley, though there has been absence of pressure or harshness, which, considering the loss he has sustained, is creditable to his kind feeling in a high degree. I have said nothing as to the untrue assertion of the payment of the 500*l.* contained in the petition, because it is quite unnecessary in the view which I take of the case. I deeply regret the duty which is thus imposed on us, but should be departing from our duty to this Court and to society, if, after the knowledge of the facts which we have, and the opportunity of explanation which has been afforded, I were not to declare that Mr. Collins ought not to continue in the trusted position of a solicitor of this Court, and he must accordingly be removed from its rolls, and proper communication of this fact made to every other Court of Westminster Hall."

Lord Justice Turner said, that the case had been submitted to the merciful consideration of the Court, and he should have been glad if the discharge of his duty did not oblige him to discard every feeling of clemency. It was impossible to overrate the importance of the duties of the solicitors of the Court, and nothing could be more dangerous than that the funds in the Court should be dealt with by them, being officers of the Court, in the manner in which had occurred here. The facts were that a sum of money was standing to the account of a tenant for life and her children. One of the children mortgaged his share for securing 1,000*l.*, and another joined as surety; a petition had been presented to the Court, the tenant for life surrendering her life interest, by the solicitor for the payment of the fund out of Court, and the mortgagee and the

other party (one of the other children, who had become a married woman) appeared by counsel, and consented to the payment of the fund out of Court. These consents were not given by the parties; it was manifest they had been given without authority, and he did not find it sworn that Mr. Collins did not himself prepare the petition, nor what were the instructions, if any, he gave to his clerk. If ever there were circumstances which could justify a solicitor in instructing counsel to consent without the express authority from his client, this case was wholly deficient in those circumstances, and there was nothing affording a justification of what had been done. His lordship was, however, very strongly disposed to say, that no circumstances could justify a solicitor in giving such authority to consent without the express sanction of his client, and that he was not justified in giving it on the speculation that the client would afterwards consent. Painful, therefore, as it was to act against a gentleman who had been so long in the Profession, and who stated that no charge had ever before been brought against his professional character, his lordship thought he should be wanting in the execution of his duty if he did not concur in the order proposed to be made by his learned brother. Order accordingly.

#### Vice-Chancellor Kindersley.

*In re Neashall's Trusts.* July 29, 1855.

RAILWAY COMPANY.—PURCHASE OF LANDS FROM TENANT IN TAIL.—COSTS OF PETITION ON PAYING FUND OUT OF COURT.

*A railway company purchased and obtained a conveyance of lands of a tenant for life and paid the money into Court where it was carried to the account of the owner. On his death, the tenant in tail barred the entail and petitioned for payment out of the fund: Held, that the railway company were not liable to the costs of the petition.*

THIS was a petition for the payment out of Court of the purchase-money of certain lands at Wednesbury, near Wolverhampton, taken for the purposes of the Grand Junction Railway Company. It appeared that the fund stood to the account of the owner of the lands in question, and that the tenant for life having died, the petitioner, who was the tenant in trust in remainder and had executed a disentailing deed, became absolutely entitled.

J. Stuart and H. R. Young, in support, contended that the company must pay the costs, citing the 8 & 9 Vict. c. 18, s. 80,<sup>1</sup> and *Ex parte Eton College*, 20 Law J., N. S., Ch. 1; 15 Jur. 45.

*Speed*, contra.

The Vice-Chancellor said, that the present

<sup>1</sup> Which enacts, that "in all cases of moneys deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive

case differed from the one cited, inasmuch as here the company had obtained their conveyance and the money was carried over to the account of the owner. This application was not under any particular Statute, but under the general jurisdiction of the Court, and the company were not liable to pay the costs.<sup>3</sup>

### Vice-Chancellor Wood.

*Benn v. Griffiths.* July 21, 1855.

WILL.—CONSTRUCTION.—CONDITION AGAINST PUBLIC POLICY VOID.

*A testator gave an annuity of 200*l.* to his niece, for and during the time she might continue separate from her husband, and directed, that in the event of their again being induced to live together, it should be reduced to 100*l.*: Held, that the condition was void, and that the niece, who since lived with her husband, took an annuity of 200*l.**

THE testator, by his will, gave an annuity of 200*l.* to his niece, who was then living separate from her husband, for and during the time she might continue to live apart and separate from him, and did not cohabit with him, and for and during the term of her natural life should she always so continue to live separately from her said husband. The will then proceeded:—"This annuity is fixed at 200*l.*, in considera-

the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England, or the Court of Exchequer in Ireland, to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking: that is to say, the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of Court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants."

<sup>3</sup> In *Esparte Marshall*, 4 Rail. Ca. 58, the Great Western Railway Company was held liable to the costs of a petition for payment out of Court of the produce of certain lands purchased from the guardian of a tenant in tail, and of which he had barred the entail on attaining his majority. In *Esparte Thornton*, in re *Midland Counties Railway Company*, Law Jour. (1848) Ch. 167, the petitioner was, however, held not entitled to the costs.

tion of my aforesaid niece having been reduced to the necessity of separating from her husband, and being thus left without his protection and thereby deprived of the home, provision, comfort, and support, she would have enjoyed had he conducted himself properly and honourably towards her. As it is, however, possible that she may consent or be induced again to live and cohabit with her present husband, it is my will and direction in such case, that the said annuity of 200*l.* be reduced to 100*l.*, for her separate use." The question now arose upon the parties having become reconciled, whether this condition was not void.

*Roll, Daniel, Bagshawe, Martelli, Hobhouse, and Bagshawe, jun.*, for the different parties.

The Vice-Chancellor said, that the condition was against public policy as tending to promote a continued state of separation between husband and wife, and was therefore void. The niece would be entitled to the annuity of 200*l.*

*Darwin v. Darwin.* July 28, 1855.

ADMINISTRATOR DE BONIS NON.—FAILURE OF BANKERS.—LIABILITY OF.

*An administrator de bonis non received certain moneys from time to time and paid them into a banker's to a separate account. A delay arose as to payment of the costs as directed by an order of the Court, in consequence of a negotiation for the assignment of a mortgage the costs of which were to be included in the taxation, and the bankers failed: Held, that in respect of such moneys the administrator was not liable, nor as to the balance which was not more than sufficient to make the necessary payments chargeable on the estate.*

IT appeared that the administrator *de bonis non* of a testator had received certain moneys from time to time and paid the same to a separate account at Sir J. D. Paul & Co., amounting in the whole to about 1,400*l.* By an order of the Court in July last, a sum of 680*l.* was directed to be applied in paying costs, but in consequence of a negotiation in reference to the assignment of a mortgage, the costs of which were to be included in the taxation, a delay had occurred in such payment. This petition was now presented by the administrator to be exonerated from the loss consequent on the failure of the bankers.

*Speed* in support; *J. N. Higgins* for the plaintiffs; *Roll and Faber* for other parties.

The Vice-Chancellor said, that the delay had been occasioned by no default of the administrator, but by treaty for the assignment of the mortgage, and however hard it might be on the *cestuis que trustent*, the petitioners were not liable. As to the remainder, it did not seem there was a larger balance than was required for payments to be made for legacy duty and premiums on policies of insurance belonging to the estate. The petitioner had properly paid the amount to a separate account, and the order would be made as prayed.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

~~~~~  
—"Still attorneyed at your service."—*Shakespeare.*  
~~~~~

SATURDAY, SEPTEMBER 1, 1855.

### REMUNERATION OF SOLICITORS.

THE Long Vacation has necessarily suspended the prosecution of the inquiry instituted by the Lord Chancellor, at the instance of the Incorporated Law Society, into the fees of Solicitors in Chancery, but doubtless the subject will continue to occupy the attention both of the learned Commissioners and the members of the Profession. It is indeed at this time of the year that the Solicitors are much engaged in drawing out and completing their bills of costs. Many of them wisely deem it a duty as well to themselves as their clients, to record, as it were, their various professional labours and estimate the charges to which they are justly entitled.

In performing this annual labour, they will be feelingly reminded of the large diminution which has taken place in their emoluments, the increase of the personal labour they have had to bestow, and the small amount of compensation which they derive from the transcript of papers by their clerks, which, under the recent reforms, have been to a great extent abolished.

The time, indeed, appears to have fully arrived when the subject of Professional Remuneration must unavoidably be taken into consideration and satisfactorily settled, either by Judicial Authority or by a Parliamentary Committee. The Solicitors, like other large bodies, are slow in their movements and difficult to arouse; but they have shown on some few occasions that they have friends in Parliament both numerous and powerful, whom they are able to influence in behalf of claims founded in justice and sound policy. We may instance the appeal to Par-

liament on the oppressive and inequitable Certificate Tax, upon which two several Governments were numerously outvoted.

The public grounds in favour of the redress of the present grievance are,—1st, that it is absolutely necessary for the due administration of Justice and the true interest of the community that the Solicitors should be maintained in a position of honour and respectability as the legal advisers of the suitors in our Superior Courts; and, 2nd, that their status and respectability cannot be upheld without such sufficient emoluments as will induce men of education, ability, and integrity to continue in, and others to join, the Profession, and who superadded to these mental and moral qualifications, are possessed of an amount of capital necessary to conduct successfully the legal affairs with which they may be entrusted.

Thus, we conceive, it is a matter of public importance that the case of the Solicitors should be well considered and justly decided as speedily as possible. To show the excitement which prevails amongst a large body of the Profession, we would call the attention of our readers to a Circular recently addressed by the Metropolitan and Provincial Law Association to their members, "on the injustice lately done to the body of Solicitors by the diminution of their remuneration for Chancery business," in which they set forth the grievances of the Solicitors in earnest and energetic language. They thus introduce the subject to the notice of the Profession:—

"The Committee of the Metropolitan and Provincial Law Association have to lay before their fellow-members, and through them, they trust, before the Profession and the Public, the



recent injury done to Solicitors by the Great Seal, which, if acquiesced in, it is to be feared would lead to further encroachments on the position and privileges of the body,—to the ruin of its present members, so far as professional emoluments go,—and to its rapid degradation as a liberal Profession. The Committee allude to the mode in which the Great Seal has lately taken on itself, not only without explanation to the Solicitors, but without a single word of previous intimation to them, or consultation with them upon the results, to lower the rate of remuneration allowed on the entire business of the Chancery Court, nearly, if not quite, one half; and, at the same time, materially to increase the quantity of labour thrown upon the Solicitors, as well as its quality; i. e., to require more work to be done than ever, and work involving greater skill; whilst the remuneration has been, at the same time, reduced one-half.”

These may be considered as somewhat strong expressions addressed by the second branch of the Profession to the Judges of the High Court of Chancery; but they who have for a long time suffered, and are still suffering, a deep injury in the amount of their professional emoluments, may be expected to call loudly for redress. An anecdote is told of a great forensic orator, which may be thus paraphrased:—A client desired him to undertake his case, but which he narrated in a very cool and quiet manner. When he had finished his story, the orator said, “he did not believe the complainant had received any serious injury.” Upon which the suitor exclaimed, —“Not believe me! I who have been plundered by this vile oppressor, and my wife and children reduced from affluence to poverty! Not believe me!” And thereupon he raised his hands appealing to the gods for the truth of the wrong he had sustained. “Aye, now,” (said the ancient pleader) “I believe you are an injured man, and you may command my best exertions in your behalf.”

The association seems determined that there shall be no mistake as to the earnestness and sincerity with which the claims of the Solicitors are advocated. The circular proceeds to state that—

“Since the Act for Consolidating the Law of Attorneys in 1843—by which *Conveyancing* business was rendered subject to taxation—the Solicitors have been placed, as to the *whole* of their occupation and earnings, under the absolute dictatorship of the Courts. New schemes of legislation are now in progress as to *Conveyancing* and other branches of Solicitors’ business. Should any of them be carried through, and the same violent hand be laid upon their remuneration as to those other branches of oc-

cupation, as there has just been with regard to Chancery, the Profession, as an honourable mode of livelihood, will be at an end. Those Solicitors who remain in the Profession will be able to live only by accepting the invitation held out by the present system, and unduly lengthening and multiplying proceedings.

“In the year 1840, the late Master of the Rolls, Lord Langdale, addressed a letter to a member of this Committee, who had then recently published some observations on the state of the Court of Chancery, in which he had animadverted upon the system of taxation at that time pursued, as not sufficiently remunerating for skill and expedition. In this letter, Lord Langdale expressed his entire concurrence in those animadversions, and requested the Solicitor addressed, to furnish him with a scheme, which might be matured, if requisite, by Act of Parliament, to put things on a better footing. In reply, the Solicitor stated that the work assigned was one which could only be properly discharged by a body as much as possible representing the Solicitors at large: and that, with Lord Langdale’s permission, he would place the matter in the hands of the Incorporated Law Society, giving his own assistance to that body, if desired. This suggestion was approved of. On entering into the matter, Lord Langdale and the Incorporated Law Society immediately became convinced that the taxing officer should proceed on a far more discretionary and *quantum meruit* principle of allowance than theretofore; and that, to render any scheme of improved remuneration effective, it was absolutely necessary that it should be extended to all branches of a Solicitor’s occupation. This involved the making conveyancing bills taxable, and *that*, again, involved a consolidation of the numerous laws relating to attorneys. The Law Society prepared the Act for that purpose. Lord Langdale undertook to carry it into Parliament. But it was kept on the table of the House of Lords for two sessions, in order that a body of Taxing Masters, fit to execute this discretionary power, should first be appointed, which could not be done till an Act had been passed abolishing the Six Clerks’ Office. The Bill for Consolidating the Law of Attorneys, as originally carried into Parliament, did not contain the clause for rendering Conveyancing Bills taxable, because the Attorneys would not consent to it till the Taxing Board was established. The Solicitors the next Session (the Taxing Board having been established) allowed that clause to be added to the Bill, and, with that addition, it was in 1843 passed into a law. The Incorporated Law Society then pressed Lord Langdale to get Orders made establishing the *quantum meruit* principle of Taxation, for which all these steps had been mainly projected. But although Lord Langdale always admitted their right to have this done, yet, from some unexplained reason, from that time to the present, nothing has been done; the old technical and absurd

<sup>1</sup> There is one exception to this statement,

principles of taxation have been allowed to continue in force until they were rendered still more absurd and unreasonable in principle, as well as utterly unremunerative in effect, by the recent changes.

"Meantime, in every way the Solicitors have felt themselves slighted by the authorities of the Great Seal with reference to all the important Chancery changes which have been under consideration during the last 10 or 12 years, but more recently in the Orders of 1852, which, made and published without consulting them, took away their livelihood, and thus they were not only slighted, but injured. Formerly it was not so. In the years 1840-41-42, they were not only kept informed of all changes, but were requested, to a great extent, firstly to propose, and then to prepare, the heads of the different Orders and Acts of Parliament required to affect them. To Lord Eldon's Commission, and to the Common Law Commissions, members of their body were secretaries, and the authorities of the law then recognised the important fact, that the Solicitors were the only persons known to and trusted by the suitors—that they were the guardians of the suitors' purse, and *alone* acquainted with the facts as to time occupied and money expended in the prosecution of suits; such being the two classes of facts all-essential in considering reforms. Since that day, however, they have been quite passed by, although the origin of every great improvement in the Court of Chancery (or of almost every one) may be traced to their body. To take, as an instance, the very project out of which the injury now under detail has arisen: The same member of this Committee, already alluded to, published and distributed, through the whole Profession, as long ago as the year 1841, this project of abolishing the Masters, and transferring the business to the Chambers of the Judges; which project was approved of and proposed for adoption by a large Committee of Solicitors, and laid before the Chancery Commission. (See Par. Pro. 1852, No. 216.) The plan suggested by this most important communication, which was never printed among their evidence, forms the principal proposal of their report, and was given by them without acknowledgment, and passed into a law.

"During the last ten or twelve years, many changes, affecting the emoluments of the Profession, have been made, and on none of them, we believe, have the Profession been consulted; not even as to the Orders for substituted remuneration. Careful comparisons between the profit arising to Solicitors from given quantities of Chancery business twelve years ago, and now, have been made; and during all that time, it is clear, that the work on the one hand, has been becoming more onerous to the Solicitor, and his remuneration, on the other, less.

namely, the present Lord Chancellor's Order of February last, allowing a discretionary fee not exceeding "ten guineas" for proceedings in the Judges' Chambers.

The effect of this and other changes on the numbers of the Profession is very remarkable. The Solicitors now taking out certificates are about one hundred less in number than they were ten years ago, though to have kept pace with the population and wealth of the country, they ought to have been 1,100 or 1,200 more. Notwithstanding the reduction in duty on articles, the number of clerks annually registered on the average of the last three years is very nearly one-third less than it was twelve or fifteen years ago."

The Committee then point out that the particular injustice recently done to the Solicitors, and which should excite the serious attention and alarm of the whole body, was, as has been stated, under the *Master in Chancery Abolition Act*.

"Every one knows," (say the Committee) "that a fee is not a pay merely for the one piece of work on the completion of which it becomes payable, but for all the previous work intervening between that point and the last-earned fee. The old fees for drawing and copying state of facts, for instance, covered all the work of reading the papers and collecting the necessary materials together. And so on as to all other fees. In a change of practice the real work is never changed. The development of the essential points of a suit requires such real work to be done somehow. The shape only is shifted. The hand may work in a different way and degree, but the brain goes through the old path.

"By the 38th section of the 15 & 16 Vict. c. 80 (the Master in Chancery Abolition Act), the Lord Chancellor is empowered and required, with the advice and consent of the Master of the Rolls and the Vice-Chancellors, or any two of them, forthwith to make and issue general Rules and Orders for regulating (*inter alia*) the fees and allowances in respect of the matters to which the said Act relates; i. e., for the work which is now performed in the Chambers of the respective Judges. The requirement of so many concurring Judges in this Order was most unusual, and would seem to betoken a desire to ensure great attention to a subject so vital to the body of Solicitors.

"By the same section it is also provided, that 'no greater amount of fees shall be payable by the suitors of the said Court to the officers thereof in respect of the business to be conducted before the Master of the Rolls and the Vice-Chancellors respectively sitting at Chambers and their respective chief clerks than is now levied in respect of similar or analogous business in the Masters' Offices.'

"Upon general principles—even without regard to the last-mentioned provision—the Committee submit that it cannot be supposed that the Legislature intended to deprive officers of the Court (who are not permitted to make their own bargains with their employers), of the remuneration reasonably due to the members of an honourable Profession; on the con-

trary, they contend that the intention of the Legislature was, that unnecessary forms and proceedings should be abolished, and that such new fees and allowances should be provided as should have the effect of giving to the Solicitor about the *same rate* of remuneration as he had previously been able to obtain for a given amount of time, labour, and responsibility. If Solicitors had been overpaid under the old system, there would be less ground of complaint; but such is not the case; and it has never been suggested in any quarter that they were.

"Now, upon such an Act of Parliament, what was due in bare justice to the Solicitors? Surely to let them know what fees were proposed to be given them for the new forms, in which the same work would have to be done in future. The point to be arrived at was, how far the new scale would, on the whole, afford for any given quantity of real work, the same remuneration as before? Lord St. Leonards very exactly appreciated the duty to be performed, as will appear by the following extract from his speech in the House of Lords on a debate kindly raised by Lord Lyndhurst on this subject in the House of Lords, on the 26th March last:—'They (said Lord St. Leonards), Barristers and Attorneys, must take the whole together, the question not being, whether a single thing pays, but whether the whole does not produce sufficient remuneration. One thing is highly remunerative; another is exactly the contrary.'

"In making the Orders under this Bill, it is confidently believed that no one single practising Solicitor was ever consulted, and only one Taxing Master, and that his observations were altogether disregarded. Orders prepared in this way were signed by the Lord Chancellor, the Master of the Rolls, and two Vice-Chancellors, and these Orders first became known to the Solicitors after they were so signed and promulgated. By these Orders the profit of the Solicitors was so destroyed, that had they no other occupation besides Chancery business, the whole body would now have ceased to exist. When fees affecting the Fee Fund are altered, the most careful statistical estimate of the probable effect of the change is first prepared, for the satisfaction of the authorities. Were any, for such purpose, prepared in this case? Did the Judges require from the Lord Chancellor the estimate on which the scales laid down by these Orders were based? It cannot be supposed that the Legislature meant that they should sign Orders, merely by way of conformity, which were certain to be so vital, and possibly, and as it turns out really, so destructive to the great body of Court officers affected by them. Nor can it be supposed that it was intended that less care should have been taken in their case, when an error could not be wholly remediable, than in the case of Court fees, as to which, if there be an error, the whole Suitors' Fund, amounting to upwards of 1,000,000*l.*, is a permanent guarantee."

The Committee then sum up the injuries complained of—first, the neglect of the Court to give the promised Orders for a more discretionary system of taxation; secondly, the gross inadequacy of the Orders of October, 1852, to fulfil the equitable meaning of the requisite of the Act; and thirdly, the way in which those Orders were made, without previous communication with the Profession. And they remark that it is to be expected that the Profession, who have been so seriously injured by the mode in which the directions were carried out, should feel not only greatly aggrieved, but considerably alarmed, and protest against general orders so vitally affecting their body, and dealing with half the business of the Court, being in any case so made without their previous knowledge. If these administrative matters were placed in the hands of a Minister of Justice amenable to Parliament, with an Under-Secretary in the House of Commons, they would have greater consideration, and the rights of all parties be duly cared for. Meanwhile, the Committee congratulate the members that the attention of the authorities has at last been drawn to the subject. The Incorporated Law Society brought the matter before the present Lord Chancellor, who gave his serious attention to it, and has referred it to Lord Justice Turner, Vice-Chancellor Wood, Mr. Follett, and Mr. Walton, to report on. Our readers are aware that a Circular inviting suggestions has been issued by them, and to it the Equity Committee of this Association have returned an answer, the chief points of which were noticed on a former occasion.\*

The Circular then states that the Committee feel that they ought not to lose this opportunity of laying before the Profession and the Public, a statement of their views, not only upon the subject of Chancery costs, but upon the whole subject of the remuneration which their branch of the Profession receive for their professional labours.

They have therefore set out accounts in the Appendix to their Circular, which most clearly show that with an increase of one-third in the Chancery business of the two offices, from which returns have been received, yet there has been a comparative loss of one-half, and an absolute one of one-third, in their profits. This, after making a fair allowance for interest on capital and for bad debts, will leave a very small remuneration for the labour and mind bestowed

\* See page 200, *ante*.

in the transaction of the business. The Committee add—

“That this is not the only startling fact which an investigation of the present system would bring to light, for they are prepared to show that the present rules of taxation have been so framed as not only to preclude any increased remuneration to the man of high standing and long experience over the mere novice, but so as actually to afford a direct pecuniary motive to transact professional duties in a slovenly and inefficient manner, and by unnecessarily employing members of the Bar, to shirk a large amount of labour and responsibility which, under a better devised system, would naturally fall to their share. It is no small honour to the body of Solicitors to have withstood this kind of temptation as resolutely as they have done. This result is, no doubt, partly traceable to the extent of moral control which societies like this Association exercise over those less respectable members which every large body must have within it.

“In ancient times, it was the policy of the law in all countries to regulate, by a fixed tariff, the remuneration which every class of labour was entitled to claim. This is now generally acknowledged to be a mistaken policy, and the tendency of modern legislation has, as a rule, been more and more to leave this question to be determined by private arrangement between the employer and the employed. This principle, however, which actually obtains with regard to the law in other countries where Free-trade has not yet been introduced into commerce, has strangely enough in this country been actually restricted within the last twelve years, in its application to Solicitors—for it was only in 1843, as mentioned above, that, upon an understanding that has not been carried out, conveyancing business was for the first time subjected to taxation.

“Private contracts between the Solicitor and his client are to some extent acted upon in all branches of business, except where the costs are ultimately to be paid out of the fund in Court, which exception, however, includes the great bulk of all Chancery business. In other branches, therefore, to a certain extent, and in a half acknowledged mode, the evils arising from the fixed scale of costs is remedied by the parties themselves, but in Chancery business the Court will, of course, enter into no such arrangement, and it is here, therefore, that the injuries inflicted by the scale are most severely felt.

“Until within the last years, all the officers of the Court were paid by fees arbitrarily fixed upon certain minute steps in the proceedings, and the natural effect of this was found in the immense multiplication of intricate forms and useless technicalities. Of late years the principle of paying by salary, instead of by fees, has been widely introduced, and has been naturally accompanied by the simplification of proceedings, and the abolition of technicalities, which has produced a great relief both to the

Profession and to the Public. All the arguments which were powerfully and successfully urged for the abolition of Court fees speak with equal strength in favour of a new system of remuneration of Solicitors, which may give them every possible motive to shorten documents, to expedite proceedings, and to assume the responsibility of themselves performing their professional duties with as little extraneous aid as possible.

“The Council of the Law Institution have put forward three claims, in which the Committee entirely concur; viz. :—

“1. To have redress against the vital injury to the Profession, as far as their remuneration is concerned, effected by the General Orders of the Court, issued in October, 1852, and the changes made in the practice, and which, if continued, must eventually prevent any respectable Solicitor from practising in Chancery.

“2. To provide that General Orders of the same description be not in future prepared and adopted without the previous knowledge of the Solicitors, and affording them the opportunity of stating the objections that exist to the change.

“3. To have a full and impartial revision of the whole system of remuneration to Solicitors, but especially for business in the Court of Chancery, and connected with the administration of property.”

“It is, moreover, absolutely necessary to extend the revision of Law Costs to other branches of business, and especially to Conveyancing, in which such a change as that pointed out by the Select Committee of the House of Lords in the year 1853, by adopting the system of Registration of Legal Titles only,<sup>3</sup> would be absolutely ruinous, unless accompanied by some corresponding alterations from the old mode of remuneration solely by length.

“The Committee have thought it their duty to make this plain statement on a subject so seriously affecting the interests of the Profession; but they desire to add, that the inclination now shown in high quarters to hear those whose vital interests are involved in their decisions, and the just and enlightened views likely to be taken by those with whom the decisions rest, afford grounds for hoping that the Profession will ultimately receive that justice to which they are entitled. The members of the Association are requested to consider this matter with the great seriousness it demands; and to urge on the press, and on all public men they have access to, not merely the injustice to themselves, but the mischief effected to the public, by continuing the present system of taxation. A wide public discussion of the subject must precede any such amendment,

<sup>3</sup> “Two important changes have already been shown to have been originally suggested by one member of the Committee of this Association; and we may state that this proposal of Registration of Titles is that of another.”

Fund, in such manner and to such particular account as the Lord Chancellor shall by any order direct; and it shall be lawful for the Lord Chancellor by any order to direct that the premises so to be sold and the fee simple and inheritance thereof shall vest in the purchaser or purchasers of the same, his or their heirs and assigns, or as he or they shall direct, and such order shall have the effect of vesting the same accordingly, without any conveyance or other assurance from her Majesty in whom the same are now vested by virtue of an Act passed in the 32 Geo. 3, c. 42:” And whereas fuller powers than those given by the last-recited enactment are requisite for enabling the Lord Chancellor to let, sell, or dispose of the Masters’ offices therein-mentioned, and it is desirable that the like powers should extend not only over the said Masters’ offices, but also over the whole of the ground acquired under the said Act of his late Majesty Geo. 3, and of the building already erected on the part thereof, and such other buildings as may be hereafter erected thereon: Be it therefore enacted as follows:

17. The last-recited enactment is hereby repealed.

18. The said piece of ground situate in Southampton Buildings aforesaid, and the buildings now being thereon, with their and every of their rights, members, and appurtenances, are hereby conveyed to and vested in the Right Honourable Robert Monsey Baron Cranworth, the now Lord High Chancellor of Great Britain, to hold the same premises to him and his successors in that office for ever, in as full and ample a manner as the same are now vested in her Majesty the Queen by force of the said Act of his late Majesty Geo. 3, in trust, nevertheless, for the purposes of the same Act, or such of the same purposes as are now capable of taking effect, and are not inconsistent with the purposes of this Act, and, subject thereto, for the uses of the Court of Chancery and the purposes of this Act.

19. It shall be lawful for the Lord Chancellor from time to time to demise or let all or any part of the said piece of ground, and with or without the same all or any part of the buildings for the time being erected thereon, for such consideration, to such person or persons, for such period, subject to such rent, covenants, and conditions, and in such manner and form as the Lord Chancellor shall from time to time think fit.

20. It shall be lawful for the Lord Chancellor from time to time to sell and absolutely dispose of all or any part of the said piece of ground, and with or without the same all or any part of the buildings for the time being erected thereon, upon such terms and in such manner as he shall think fit.

21. For effectuating any such sale as aforesaid, it shall be lawful for the Lord Chancellor by any order to direct that the said piece of ground and the buildings for the time being erected thereon, or such part thereof respectively as shall be comprised in the sale, and

the fee simple and inheritance thereof, shall vest in the purchaser or purchasers thereof, his or their heirs and assigns, or as he or they shall direct; and any such order shall have the effect of vesting the same accordingly, without any conveyance or other assurance whatsoever.

22. The rents, purchase-moneys, and other moneys which shall be payable upon or in respect of any such demise, letting, or sale as aforesaid shall be respectively paid by such person, and in such manner as the Lord Chancellor shall from time to time direct, into the Bank of England, with the privity of the Accountant-General of the Court of Chancery, to such account or accounts already opened or to be opened as the Lord Chancellor shall from time to time direct; and thereupon such rents, purchase-moneys, and other moneys respectively shall become and be dealt with as part of the respective funds (if any) theretofore standing to such account or accounts as aforesaid, or be otherwise subject to the order of the Lord Chancellor for the benefit of the suitors of the said Court, according to the said provision contained in the said Act of his late Majesty Geo. 3, respecting the money thereby directed or authorised to be placed out as aforesaid.

23. In this Act the expression “the Lord Chancellor” shall be construed to mean the Lord High Chancellor of Great Britain for the time being, and to include or be applicable to the Lord Keeper or Lords Commissioners for the custody of the Great Seal of the United Kingdom for the time being.

#### FRIENDLY SOCIETIES.

18 & 19 VICT. c. 63.

[Concluded from page 322.]

39. The trustees of any friendly society may, out of the funds thereof, subscribe to any hospital, infirmary, charitable or other provident institution, such annual or other sum as may be agreed upon by the committee of management, or by a majority of the members at a meeting called for that purpose, in consideration of any member of such society, his wife, child, or other person nominated, being eligible to receive the benefits of such hospital or other institution, according to the rules thereof.

40. Every dispute between any member or members of any society established under this Act or any of the Acts hereby repealed, or any person claiming through or under a member, or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society, and the decision so made shall be binding and conclusive on all parties, without appeal: Provided that where the rules of any society established under any of the Acts hereby repealed shall have directed disputes to be referred to justices, such disputes shall, from and after the 1st day of August, 1855, be referred to and decided by the County Court as hereinafter mentioned.

41. In all friendly societies established under this Act or any of the said repealed Acts, all applications for the removal of any trustee, or for any other relief, order, or direction, or for the settlement of disputes that may arise or may have arisen in any society the rules of which do not prescribe any other mode of settling such disputes, or to enforce the decision of any arbitrators, or to hear or determine any dispute, if no arbitrator shall have been appointed, or if no decision shall be made by the said arbitrators within 40 days after application has been made by the member or person claiming through or under a member or under the rules of the society, shall be made to the County Court of the district within which the usual or principal place of business of the society shall be situate; and such Court shall, upon the application of any person interested in the matter, entertain such application, and give such relief, and make such orders and directions in relation to the matter of such application, as hereinafter mentioned, or as may now be given or made by the Court of Chancery in respect either of its ordinary or its special or statutory jurisdiction; and the decision of such County Court upon and in relation to such application as aforesaid shall not be subject to any appeal: Provided always, that in Scotland the sheriff within his county, and in Ireland the assistant barrister within his district, shall have the same jurisdiction as is hereby given to the Judge of a County Court.

42. In all cases where the order of such County Court shall be for the payment of money, the same may be enforced in the same manner as the ordinary judgments of such Court are enforced; but where the order of the said Court shall be for the doing of some act, not being for the payment of money, it shall be lawful for the Judge of such County Court in his said order to order the party to do such act, or that in default of his doing it he shall pay a certain sum of money; and in case he refuse or neglect to do the act required, upon demand in that behalf, the sum of money or penalty in the said order may then be recovered in the same manner as a judgment for debt or damages in such Court; and it shall not be lawful to remove the same by certiorari or other writ or process to any Superior Court of Record.

43. Provided, however, That the Lord Chancellor may make such orders for regulating the proceedings by and before the Judges of County Courts under this Act as he may think fit; and in Scotland the Court of Session shall have the like power by act of sederunt as regards proceedings before sheriffs under this Act; and, subject to such orders and acts of sederunt respectively, such Judges and sheriffs may regulate the proceedings before them respectively so as to render them as summary and inexpensive as conveniently may be.

44. In the case of any friendly society established for any of the purposes mentioned in section 9 of this Act, or for any purpose which

is not illegal, having written or printed rules, whose rules have not been certified by the registrar, provided a copy of such rules shall have been deposited with the registrar, every dispute between any member or members of such society, and the trustees, treasurer, or other officer, or the committee of such society, shall be decided in manner hereinbefore provided with respect to disputes, and the decision thereof, in the case of societies to be established under this Act, and the sections in this Act provided for such decision, and also the section in this Act which enacts a punishment in case of fraud or imposition by an officer, member, or person, shall be applicable to such uncertified societies: Provided always, that nothing herein contained shall be construed to confer on any such society whose rules shall not have been certified by the registrar, or any of the members or officers of such society, any of the powers, exemptions, or facilities of this Act, save and except as in and by this section is expressly provided.

45. The trustees of friendly societies established under this Act or under any of the repealed Acts, or the officer thereof appointed to prepare returns, shall, once in every year, in the months of January, February, or March, transmit to the registrar a general statement of the funds and effects of such society during the past twelve months, or a copy of the last annual report of such society, and shall also, within three months after the expiration of the month of December, 1855, and so again within three months after the expiration of every five years succeeding, transmit to the said registrar a return of the rate or amount of sickness and mortality experienced by such society within the preceding five years, in such form as shall be prepared by the said registrar, and an abstract of the same shall be laid before Parliament; and the registrar shall also lay before Parliament every year a report of his proceedings, in his office of registrar, and of the principal matters transacted by friendly societies which have come under his cognizance during the past year.

46. And whereas under the provisions of the Acts hereby repealed, or some of them, certain associations or societies have been formed in England and Ireland for the provident and charitable purpose of securing annual payments to the nominees of the members thereof, contingent upon the death of such members, and have invested their funds in the manner provided by such Acts, and doubts may arise whether such associations or societies will be entitled to the exemptions and privileges by this Act conferred in the event of such annual payments amounting in the aggregate to more than 30*l.*; and it is expedient to remove such doubts, and to give protection to such associations or societies, and to the funds thereof: Be it therefore enacted, That notwithstanding anything in this Act contained to the contrary, all such associations or societies as were founded and subsisting under the provisions of the said Acts previously to the 15th day of

August, 1850, shall enjoy the exemptions and privileges by this Act conferred on societies to be established under the provisions of this Act as fully as if they had been registered and certified under this Act, and notwithstanding that the contingent annual payments to which the nominees of the present or future members of such associations or societies may become entitled shall exceed in the aggregate the sum of 30*l*.

47. In any case where the rules of any society already enrolled or certified have provided that a member shall be deprived of any benefit by reason of his enrolment or service in the militia, it shall be lawful for the trustees of such society to require of any member a contribution exceeding the rate of contribution hitherto payable by such member, to an amount not exceeding one-tenth of such rate, during the time such member shall be serving out of the United Kingdom, or to suspend all claim of such member to any benefits of such society, and all claim of the society to any contributions payable by such member, during the time he may be serving in the militia out of the United Kingdom, provided that such suspension shall cease so soon as the said member shall return to the United Kingdom, and he shall thereupon be replaced on the same footing as before he went abroad with the regiment to which he belongs.

48. All the provisions of this Act shall apply to all societies constituted under the Industrial and Provident Societies Act, 1852, in the same manner as the laws in force relating to friendly societies at the date of the passing of the said Industrial and Provident Societies Act, 1852, are by the said last-mentioned Act directed to apply to societies constituted thereunder; and the limitation hereinbefore contained of the amount of annuities and sums payable on the death of any person, or on any other contingency, in the case of societies established under this Act, shall apply to all societies constituted under the said Industrial and Provident Societies Act, 1852.

49. The word "society" shall extend to and include every branch of a society, by whatever name it may be designated.

50. This Act shall extend to Great Britain and Ireland, and the Channel Isles, and the Isle of Man.

51. This Act shall commence and take effect from the 1st day of August 1855.

#### SCHEDULES REFERRED TO BY THE FOREGOING ACT.

##### FIRST SCHEDULE.

*Reference to Act.—Title of Act.—Extent of Repeal.*

33 Geo. 3, c. 54.—An Act for the Encouragement and Relief of Friendly Societies.—The whole Act.

35 Geo. 3, c. 111.—An Act for more effectually carrying into execution an Act made in the 33 Geo. 3, intituled "An Act for the Encouragement and Relief of Friendly Societies," and for extending so much of

the Powers thereof as relates to the framing Rules and Regulations for the better Management of the Funds of such Societies, and the Appointment of Treasurers to other Institutions of a charitable nature.—The whole Act.

33 Geo. 3, c. 68 (Irish).—An Act for the Encouragement and Relief of Friendly Societies.—The whole Act.

43 Geo. 3, c. 111.—An Act for enabling Friendly Societies intended to be established under an Act passed in the 33 Geo. 3, to rectify mistakes made in the Registry of their Rules.—The whole Act.

49 Geo. 3, c. 58.—An Act to explain and render more effectual an Act passed in the Parliament of Ireland, in the 36 Geo. 3, for the Encouragement and Relief of Friendly Societies.—The whole Act.

49 Geo. 3, c. 125.—An Act to amend an Act made in the 33 Geo. 3, for the Encouragement and Relief of Friendly Societies.—The whole Act.

59 Geo. 3, c. 128.—An Act for further Protection and Encouragement of Friendly Societies, and for preventing Frauds and Abuses therein.—The whole Act.

6 Geo. 4, c. 74.—An Act for consolidating and amending the Laws relating to Conveyances and Transfers of Estates and Funds vested in Trustees who are Infants, Idiots, Lunatics, or Trustees of unsound Mind, or who cannot be compelled or refuse to act; and also the Laws relating to Stocks and Securities belonging to Infants, Idiots, Lunatics, and persons of unsound Mind.—So much of section 11 as relates to Friendly Societies.

10 Geo. 4, c. 56.—An Act to consolidate and amend the Laws relating to Friendly Societies.—The whole Act.

2 Wm. 4, c. 37.—An Act to amend an Act of the 10 Geo. 4, by extending the Time within which pre-existing Societies must conform to the provisions of that Act.—The whole Act.

4 & 5 Wm. 4, c. 40.—An Act to amend an Act of the 10 Geo. 4, to consolidate and amend the Laws relating to Friendly Societies.—The whole Act.

3 & 4 Vict. c. 73.—An Act to explain and amend the Acts relating to Friendly Societies.—The whole Act.

9 & 10 Vict. c. 27.—An Act to amend the Laws relating to Friendly Societies.—The whole Act.

13 & 14 Vict. c. 115.—An Act to consolidate and amend the Laws relating to Friendly Societies.—The whole Act.

15 & 16 Vict. c. 65.—An Act to continue and amend an Act passed in the 14 Vict. to consolidate and amend the Laws relating to Friendly Societies.—The whole Act.

16 & 17 Vict. c. 123.—An Act to amend the Laws relating to the Investments of Friendly Societies.—The whole Act.

17 & 18 Vict. c. 50.—An Act to continue an Act of the 12 Vict., for amending the Laws relating to Savings' Banks in Ireland, and to

authorise Friendly Societies to invest the whole of their Funds in Savings' Banks.—Section 2.

17 & 18 Vict. c. 101.—An Act to continue and amend the Acts now in force relating to Friendly Societies.—The whole Act.

## SECOND SCHEDULE.

### *Form of Registrar's Certificate to Rules of Friendly Societies.*

I hereby certify, that the foregoing rules [or the alterations or amendments of the rules] of the society at in the county of are in conformity with law, [and in the case of a new society] and that the society is duly established from the present date, and is subject to the provisions and entitled to the privileges of the Acts relating to Friendly Societies.

The Rates of contributions and payments are stated to have been prepared by A. B., actuary of or [as the case may be] are not stated to have been prepared by any actuary.

## THIRD SCHEDULE.

### *Form of Bond.*

Know all men by these presents, that we, A. B. of treasurer, &c. [as the case may be] of the society, established at in the county of and C. D. of (as surety on behalf of the said A. B.) are jointly and severally held and firmly bound to A. B. of C. D. of and E. F. of the trustees of the said society, in the sum of to be paid to the said A. B., C. D., and E. F. as such trustees, or their successors, trustees for the time being, or their certain attorney, for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated the day of in the year of our Lord

Whereas the above bounden A. B. hath been duly appointed treasurer, &c. [as the case may be] of the society, established as aforesaid, and he, together with the above-bounden C. D. as his surety, have entered into the above-written bond, subject to the condition hereinafter contained: Now therefore the condition of the above-written bond is such, that if the said A. B. shall and do justly and faithfully execute his office of treasurer, &c. [as the case may be] of the said society established as aforesaid, and shall and do render a just and true account of all moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers, and property of or belonging to the said society in his hands or custody, to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments, and likewise

shall and do in all respects well and truly and faithfully perform and fulfil his office of treasurer, &c. [as the case may be] to the said society, according to the rules thereof, then the above-written bond shall be void and of no effect; otherwise shall be and remain in full force and virtue.

## NOTICES OF NEW BOOKS.

*The Monarchy of France; its Rise, Progress and Fall.* By WILLIAM TOOKE, F.R.S. 8vo., pp. 752, price 16s. Sampson Low & Son, 47, Ludgate Hill.

WE are glad to call the attention of our readers to this valuable work of Mr. Tooke, the eminent Solicitor, who during a professional life of upwards of 50 years has devoted much of his time to subjects of literature and science. His object has been to convey in a condensed form to the English reader as much information of public and political events in France, under its monarchy, as it may be necessary to acquire, with a due regard to the more important demands on his attention of professional reading and research; and of the large requirements of English history and biography, and the continually increasing extent and interest of our literature in general.

This History of the Monarchy of France, the Author admits, is open to the objection "that it is protracted about seven years by way of diary beyond the period assigned for the fall of the monarchy, and then chronologically continued to this time.

"In both instances, however," (Mr. Tooke contends) "it is but a continued exhibition of the still unsettled consequences of that fall; nor could it be expected that the oldest sovereignty which ancient or modern history can boast, existing for fourteen centuries through a succession of sixty-seven monarchs, and civil and military institutions matured by the wisdom and illustrated by the achievements of Charlemagne, St. Louis, Charles the Wise, Henry the Great, and Louis the August, could be radically subverted without causing a heavy swell of public and social disturbance and agitation, the satisfactory solution and subsidence of which may not be witnessed by the youngest individual of the existing generation."

In these circumstances, the Author considered it desirable that his work should supply "a concise summary of the past and present political condition of France, as a starting point from whence the future destinies of that splendid and fertile country and its thirty-five millions of intelligent, gallant, and accomplished inhabitants may be traced."



It is well observed in the *Morning Post*,<sup>1</sup> that "Historical summaries are absolutely indispensable for the instruction of a large class of readers—for the majority of readers, indeed—who have neither the leisure nor the patience to study for themselves the elaborate and voluminous chronicles which record in detail the complicated affairs of nations. But the task of writing a faithful, concise, and satisfactory summary of the history of any nation is by no means an easy one; and the labour necessarily bestowed upon it is seldom appreciated by the reader."

The writer observes, that such a volume was much wanted; and adds, that it is founded upon French authorities; and "may unquestionably be accepted as the ablest, most interesting, and most trustworthy abridgement of French history, from the time of its earliest authentic records to the close of the last century, which has yet been published. Mr. Tooke's narrative closes with the fall of the monarchy, which he dates from the meeting of the States-General, on the 5th of May, 1789; but he continues the sad story of the revolution in the form of a diary of events; and there appears something almost satirical in the tabular statement which he adds, of the different forms of government which have so rapidly succeeded one another since the dissolution of the ancient monarchy of France. We have no difficulty indeed in drawing an inference as to the monarchical and legitimist sentiments of the Author; but as he does not carry his history into the period when those sentiments became unpopular in France, he is free from all suspicion of prejudice; and no spirit of partisanship disfigures his history of the French monarchy."

We entirely concur in these remarks, and would willingly extend our notice to the general merits of the work. We are limited, however, in these pages to subjects of jurisprudence, and shall therefore submit to our readers Mr. Tooke's note on the Laws and Customs of the Franks and Normans, and some Biographical Sketches of the French Avocats who distinguished themselves at different times during the French Revolution.

"One of the most important codes among the feudal nations was the Salic Law. It derived its appellation from the Salians, who inhabited the country from the Loire to the Carbonarian Wood on the confines of Brabant and Hainault. It is supposed to have been written in the Latin language, about the beginning of

the fifth century, under the superintendence of Wisogastus, Bodogastus, Sologastus, and Windogastus, the four chieftains of the nations." It received considerable additions from Clovis, Childebert, Clotaire, Charlemagne, and Louis the Debonnaire. There exist two ancient versions of it, and they differ so considerably, that they have been sometimes treated as distinct codes.

"Another tribe of the same people, who occupied the banks of the Rhine, the Meuse, and the Scheldt, were known by the name of the Ripuarians, and were governed by a collection of laws which from them was called the Riparian law. They seem to have been first promulgated by Theodoric, and to have been augmented by Dagobert. The punishments inflicted by the Riparian code are more severe than the punishments inflicted by the Salic law, and the Riparian law recognises the trial by judgment of God and by duel, of which no mention whatever is made in the Salic code; both codes were adopted by the Franks, the neighbour and occasional allies of the Salians, as well as of the Ripuarians.

"These laws were in course of time in some measure superseded by the Capitularies. The word Capitulary, in its generic sense, denotes every kind of literary composition divided into chapters. Laws of this description were promulgated by Childebert, Clotaire, Carloman, and Pepin, but no sovereign appears to have promulgated so many of them as Charlemagne, which he did with a view to establish an uniformity of law throughout his vast dominions, thus adding to, amending, or explaining the existing laws by short additional chapters. The authority of these Capitularies prevailed in every kingdom under the dominion of the Franks, and was submitted to in many parts of Italy and Germany.

"With the Merovingian race the Salic and Riparian laws expired. The Capitularies remained in force in Italy longer than in Germany, and in France longer than in Italy; the publication of the Decretum of Gratian, which totally superseded them in all religious concerns, put an end to their authority in France.

"The codes, in all matters not specifically enacted by them, not only permitted, but recognised in the several districts and provinces the ancient customs which prevailed in each of them. Written collections of these customs were published by authority; these collections formed a considerable part of the law of France, and were a striking feature of its jurisprudence, the origin of which may be traced to the commencement of the Capetian race. The verification of these customs, which differed in every province, and frequently in each signory, after upwards of forty years' labour bestowed on their compilation, was not completed until 1609, in the reign of Louis XII.

"The grand Coutumier of France is con-

<sup>1</sup> "More probably the designations of the four villages or districts from which the four chieftains were convened."

tained in 4 vols. folio ; it comprises above 100 collections of the customs of provinces, and 200 of the customs of cities, towns, or villages.

"Another collection, called *Les Etablissements de St. Louis*, holds a high rank for the wisdom with which it is written, and the curious matter it contains.

"The grand Coutumier de Normandie, for its high antiquity and the relation it bears to the feudal jurisprudence of England is particularly interesting to an English reader. An edition of it was published by Basnage, with a learned commentary. See *Horæ juridicæ subsecivæ*, by Charles Butler, 1807.

"The Salic code, if it did not create, at all events accommodated itself, with extraordinary exactness, to the several gradations in rank and condition of which the motley population, of what for the present purpose we must territorially designate Gaul, consisted. These gradations were in course of formation from the period of the early conquests and settlements in that country by the Franks, in the fifth century, until their full development by the completion of the feudal system in the ninth. To render this more intelligible, we extract from the Salic and Ripuarian codes, and from the capitularies of Charlemagne, establishing a kind of tariff of the comparative value of the lives of the individuals of each class of which the civil hierarchy, comprised in that population, was composed :—

"1. The first rank in the scale of value and compensation, attaches to the man of Frank origin, and to the barbarian living under the law of the Franks.

"2. The second, is the barbarian living under the law of his own nation or tribe, whatever it may be.

"3. Then comes the indigenous free proprietor, or Roman possessor ; and, in the same rank, the Lite, Leude, or German colonist.

"4. Then the Roman tributary—that is, the indigenous colonist.

5. And, lastly, the slave without distinction of origin."

After a masterly summary of the principal events recorded in the history of France, down to Louis the 16th, Mr. Tooke describes the proceedings of the States General, the National Assembly, constituent and legislative, the Convention ; and the several Governments Directorial, Consular, and Imperial ; and again Royal, Provisional, Republican, and Imperial. We are then presented with an interesting account of the Deputies returned to the States General in 1789, many of whom figured during the several stages of the French Revolution, accompanied by concise biographical sketches of the more remarkable personages—their talents, and their respective merits and demerits. As before intimated, we shall confine our extracts to the Deputies who were members of the Legal Profession ; and shall make

some selections, showing the able and graphic manner in which Mr. Tooke has condensed his characteristic sketches of the Avocats of France who took a prominent part in the strange events which preceded and followed the overthrow of the monarchy.

"*Barnave*, Antoine Jean Marie, Propriétaire, Avocat (Grenoble). One of the earliest and most distinguished leaders of the revolution movement ; he contended in the assembly with Mirabeau for the palm of eloquence, but was as inferior to him as the highest artificial cultivation of that art will ever be to the spontaneous torrents of the transcendent inspirations of native genius. Barnave was only 27 years of age when he made his first appearance in the assembly, and closed his short and brilliant, but mischievous, career at the age of 32, under the guillotine, on 28th November, 1793. He started an inveterate enemy to royalty, but being sent by the convention to conduct the royal party from Varennes with two brutes who were seated with him in the carriage, the queen by her enchanting address won him and exasperated his colleagues, Pethion and Latour Maimbourg : from that time it was suspected that he favoured the royal cause—he was denounced by Robespierre, and suffered accordingly.

"*Brillat*, Savarin, Avocat, at Bugey. When the committees proposed at the sitting of the 30th May, 1791, the abolition of the pain of death, he opposed the motion. Concluding his speech by saying,—'If your committee seek to evince their philosophy by this suggestion, your rejection of it will be the best evidence of the value you attach to an honourable life.'

"*Prieur*, Avocat, at Châlons, rendered himself conspicuous by his yelping tone and the expression of his extreme opinions, obtaining in consequence the name of 'Le Crieur.' He vented the grossest abuse against the king on the subject of his departure from Paris, and afterwards voted for his death. He was sent to allay the troubles in La Vendée, and one of his first expedients was to induce 1,000 peasants to lay down their arms, and then cause them all to be shot. Although a devoted agent of the Jacobins, he was employed by their successors, but being afterwards implicated in one of their conspiracies for regaining their ascendancy, was arrested and imprisoned, but enlarged on the general amnesty granted by the Directory. This, however, did not change the leopard's skin, and he verified the experience of the Parisians, who asserted that once a Jacobin always a Jacobin.

"*Prugnon*, Avocat, at Nancy. Appears to have been a moderate and judicious man in his treatment of the questions of legislation, respecting which he chiefly occupied himself, and it is to be regretted that his plain sense and good abilities were not engaged in a better cause.

"*Target*, Avocat, of Paris. Had acquired a first-rate celebrity at the bar, and, as occasionally happens in the legal and other professions,

with very second-rate qualifications. The king was advised to require his assistance as his counsel on his trial; this Target refused in a letter to the assembly, signed by him as the republican Target. That his refusal arose from a dastardly apprehension of consequences was obvious from his soon afterwards getting himself appointed secretary to Chalandon, a shoemaker, and president of one of the Jacobin sections of Paris, under whom Target, in his capacity of secretary, had to sign warrants for the arrest and execution of many innocent individuals.

"*Tronchet*, Avocat, of Paris. The learned and eloquent defender of the king, forming a perfect contrast to Target. In September, 1793, he was decreed for arrest, but withdrew from the threatened storm, and in 1795 was nominated on the Council of Elders, and ultimately promoted to the Tribunal of Cassation.

"*Vernier*, Avocat, of Aval.<sup>3</sup> Devoted himself almost exclusively to matters of finance, and wrote and spoke ably on the subject. On the trial of the king, he in his capacity of legislator voted for his detention, but declined to act or interfere as Judge. He was arrested towards the close of Robespierre's power, but released by his fall. Being nominated on the Council of Elders, he favoured the claim to power of Bonaparte, and was therefore promoted by him to the Conservative Senate."

## LAW OF ATTORNEYS AND SOLICITORS.

### ORDER ON SOLICITOR TO PAY OVER MONEYS TO CLIENT.

It appeared that in the year 1851, Mrs. Mercer employed Mr. Becke as her solicitor, in obtaining letters of administration to the estate of Mary Bignell, and that he proceeded to get in the estate. The residue was supposed to be divisible in fourths, of which Mrs. Mercer was entitled to one-fourth, and he accordingly handed it over to her, and paid two other fourths to the parties entitled thereto. A Mr. George Bignell was considered to be entitled to the remaining fourth part, and Mr. Becke retained it for him. It subsequently was ascertained that George Bignell had died in the lifetime of the intestate, and his share became divisible among the three other next of kin. Mr. Becke paid Mrs. Mercer her share and retained the remainder, refusing to pay it her, on the ground he was in some-wise a trustee of the amount, having notice of the rights and claims of the other next of kin.

This petition was presented by Mrs.

<sup>3</sup> The names of places following the names of the Deputies show the several constituencies by whom they were elected to the Assembly.

Mercer, praying for an order on Mr. Becke to pay over the balance with costs.

The *Master of the Rolls* said "*prima facie*, the petitioner, as legal personal representative, is entitled to the fund which constitutes part of the estate, which it is her duty to administer. If an administratrix employs a solicitor for the purpose of getting in the assets, he is bound to pay over the money to his client, after deducting his costs, and here an order would, if necessary, be made to compel him to pay over the whole amount to the petitioner.

Arrangements were made between Mrs. Mercer and Mr. Becke, but without the intervention of the other persons interested, by which the sum in question was allowed to remain in his hands. If the next of kin had been parties to, and concurred in the arrangement that this sum should remain in the hands of the solicitor, he might then be constituted a trustee, but he could not by an understanding between himself and his client constitute himself a trustee for third parties. Again, if he had been trustee, he ought to have taken some proceedings to distribute the fund, but he has taken none.

There can be no question but that if the next of kin had taken proceedings against Becke, he might have protected himself by saying, 'I am merely the solicitor of Mrs. Mercer, and am only bound to pay over the money to her,' and on the other hand, Mrs. Mercer would be liable for the money received by her agent and solicitor. The order must be made, and Mr. Becke must pay the costs of the petition." *In re Becke*, 18 Beav. 462.

## LAW OF COSTS.

### WHERE VERDICT ON REFERENCE FOR ONE FARTHING.

THIS was an action for an injury to the plaintiff's reversion by making a drain or sewer under his premises, without his licence. By an order of *Nisi Prius*, it was ordered that a verdict be entered for the plaintiff, claim 500*l.*, costs 40*s.*, subject to the award of a barrister, who was empowered to direct that a verdict should be entered for the plaintiff or the defendant as he should think proper, and should have all the same power as the Court or a Judge sitting at *Nisi Prius*, and that the costs of the said suit should abide the event of the award, and the costs of the reference and award should be in the discretion of the arbitrator.

The arbitrator made his award, and found

all the issues for the plaintiff, with the exception of the first, which he found partly for the plaintiff and partly for the defendant, and he directed that the verdict entered for the plaintiff should stand, but that the damages should be reduced to the sum of one farthing, and he awarded that the defendant should pay to the plaintiff the sum of 5*l*.

*Held*, that the plaintiff was not, in the absence of a certificate under Lord Denman's Act (3 & 4 Vict. c. 24, s. 2), entitled to the costs of the cause. *Cooper v. Pegg*, 16 C. B. 264.

## NOTES ON RECENT STATUTES.

### COMMON LAW PROCEDURE ACT, 1852.

#### SPECIAL INDORSEMENT ON WRIT OF INTEREST.

IN an action the defendant was served with a writ of summons specially indorsed, under the 15 & 16 Vict. c. 76, s. 25, as follows:—

Amount of defendant's promissory note dated 8th July, 1853, payable to plaintiff on demand . . . . .	£ 200
Amount of defendant's promissory note, dated 13th August, 1853, payable to plaintiff on demand . . . . .	300
Amount of defendant's I O U, dated 25th Dec., 1853, payable to plaintiff . . . . .	500
	£1,000

The whole being for money lent and advanced by the plaintiff to the defendant.

The plaintiff also claims interest on 200*l*. at 10*l*. per cent. per annum, and on 800*l*. at the rate of 5*l*. per cent. per annum, from the 29th day of December, 1854, until payment or judgment."

Upon the defendant's non-appearance, judgment was signed for the amount and interest.

On motion to set aside the judgment, *Aderson, B.*, said:—"It seems to me that the special indorsement allowed by the Statute is of a claim only; and the defendant, if so disposed, may dispute it by appearing, and then the indorsement assumes the form of particulars of demand. Now, suppose in this case there had been a declaration with these particulars annexed to it, and the defendant had appeared and admitted the entire claim, would he not have been liable to pay interest at the rate specified? Surely he would, inasmuch as he conceded that he was bound by law to pay the interest claimed. Then, is not the defendant's non-appearance, where the rate of

interest claimed is specified by indorsement on the writ, equivalent to that? In my opinion, it is the same as if the defendant admitted every word of the indorsement to be correct, and that he was bound to pay the whole demand."

*Pollock, C. B.*, added:—"We wish that it should be distinctly understood by the Profession, that in all cases, except bills of exchange and promissory notes (as to which it is the usual practice of the Court to allow interest as a matter of course when the jury give a verdict for the plaintiff), if we find that any party not entitled to interest under an express or implied contract shall, nevertheless, claim it by a special indorsement on the writ, in order to gain an improper advantage, and in default of appearance sign judgment for a larger sum than he was entitled to, we will not only set aside such judgment, but visit the attorney with the consequences of his abuse of the law, by making him pay the costs." The rule was refused. *Rodway v. Lucas*, 10 Exch. R. 667.

## ADMISSION OF ATTORNEY

TO

## PRACTISE IN COUNTY COURTS.

### INSOLVENCY CASES.

ON August 27 last, Mr. Denney applied to the Chief Commissioner, that an attorney might be admitted to practise in prison cases in the Maidstone County Court. The learned counsel said, the application was of importance, as the object was to throw open in such cases the practice of the County Courts to the whole Profession. This Court had regulated the admission of country attorneys under the 1 & 2 Vict. c. 110, but by the Solicitors' Act, passed in the year 1843, an attorney had a right to practise in any inferior Court, on signing the roll. The Act was the 6 & 7 Vict. c. 73, s. 27. Application had been made to Mr. Espinasse, the Judge of the Court, but he was not inclined to admit more than two attorneys to practise in prison cases. The business was now likely to be augmented by the Cinque Ports' Act, which would take effect in September.

The Chief Commissioner declined to alter the practice without conference with his colleagues, and the motion was refused.—(From the *Morning Chronicle*).

## PROVINCIAL LAW SOCIETIES.

THE following is, we believe, a correct List of the several Provincial Law Societies in England:—

Name of Society.	Name of Secretary.	Residence of Secretary.
Bristol . . . . .	Henry S. Wasbrough . . . . .	Bristol.
Buckinghamshire . . . . .	Acton Tindal . . . . .	Aylesbury.
Cambridgeshire . . . . .	Ebenezer Foster, jun. . . . .	Cambridge.
Cumberland . . . . .	H. J. Halton . . . . .	Carlisle.
Devonshire . . . . .	R. T. Campion . . . . .	Exeter.
Exeter . . . . .	Winslow Jones . . . . .	Exeter.
Plymouth . . . . .	F. Marshall . . . . .	Plymouth.
Durham—		
Sunderland . . . . .	T. Burn, jun. . . . .	Sunderland.
Gloucestershire . . . . .	John Burrup . . . . .	Gloucester.
Kent . . . . .	John Case . . . . .	Maidstone.
Lancashire—		
Lancaster . . . . .	T. Swainson . . . . .	Lancaster.
Liverpool . . . . .	H. W. Collins . . . . .	Liverpool.
Manchester . . . . .	F. Marriott . . . . .	Manchester.
Preston . . . . .	W. W. Riley . . . . .	Preston.
Preston Law Library . . . . .	William Banks . . . . .	Preston.
Lincolnshire . . . . .	J. W. Danby . . . . .	Lincoln.
Northamptonshire . . . . .	Thomas Scriven . . . . .	Northampton.
Northumberland—		
Newcastle-on-Tyne } . . . . .	{ William Crighton . . . . .	Newcastle-on-Tyne.
and Gateshead } . . . . .	{ James Radford . . . . .	Newcastle-on-Tyne.
North and South Shields . . . . .	H. Snowball . . . . .	South Shields.
Somersetshire . . . . .	William P. Pinchard . . . . .	Taunton, of the Senior Club.
	E. B. Gooding . . . . .	Bridgwater, of the Junior Club.
Staffordshire . . . . .	John Willim, jun. . . . .	Bilston.
Wolverhampton . . . . .	R. H. Price . . . . .	Wolverhampton.
Suffolk West . . . . .	James Sparke . . . . .	Bury St. Edmund's.
Suffolk East . . . . .	S. B. Jackaman . . . . .	Ipswich.
Surrey . . . . .	Beriah Drew . . . . .	Bermondsey.
Sussex . . . . .	Edward Cornford . . . . .	Brighton.
Warwickshire . . . . .	C. M. Ingleby . . . . .	Birmingham.
Wiltshire . . . . .	John Swayne . . . . .	Wilton.
Westmoreland . . . . .	Thomas Harrison . . . . .	Kendal.
Worcestershire . . . . .	J. Stallard . . . . .	Worcester.
Yorkshire—		
Hull . . . . .	George Stamp . . . . .	Hull
Leeds . . . . .	E. Eddison . . . . .	Leeds
Wakefield . . . . .	E. J. Pickslay . . . . .	Wakefield.
Yorkshire . . . . .	Thomas Hodgson . . . . .	York.

We are not aware that there is any Law Society in *Wales*; but understand that Mr. F. Green, of Carmarthen, has taken some steps to supply this deficiency in his part of the Principality.

## SELECTIONS FROM CORRESPONDENCE.

## ENFRANCHISEMENT OF COPYHOLDS.—COVENANT TO PRODUCE.

A TENANT for life enfranchises copyhold estate under the compulsory powers of the recent Act. Is the copyholder entitled to a covenant to produce his title deeds, including the Court Rolls?

## COSTS OF SOLICITOR-TRUSTEE.

Surely the monstrous case referred to in your

Number of the 18th August, will result in a re-consideration of the rule on the subject,—for a solicitor, after acting in the trusts as a trustee for a period exceeding 20 years, and being from time to time paid his charges, to be compelled to refund, is beyond the mark. It is gross injustice and cruelty, and may produce absolute ruin. I think the rule should be reversed, and that the solicitor, subject however in all cases to the supervision of the Taxing Master, should be allowed his reasonable costs and charges, except where the will or settlement provides for the contrary.

A SOLICITOR.

## NOTES OF THE CIRCUIT.

### TRIALS AT CROYDON.

It appears that a larger number of cases were entered for trial at the present assizes than has ever been known in the county of Surrey. The criminal cases having been tried, Mr. Justice Cresswell proceeded with some common jury actions and then departed, leaving Mr. Justice Wightman nearly 70 special and common jury causes to "dispose of."

We remember of old that Lord Chief Justice Ellenborough was famous for *disposing* of many hundred causes at a sitting, but whether to the satisfaction of the parties we will not undertake to say. He was a powerful Judge and excellent lawyer, especially in important and difficult cases, and so no doubt are most of the Judges of the present day, but some of them are, it is said, inclined to clear the cause list without regard, on some occasions, to the wishes of the suitors. We have heard of compulsory references and compromises, notwithstanding the urgent objections both of suitors and attorneys. We do not say that either Judge or leading counsel terminate the assizes from improper motives of personal convenience or to commence the Long Vacation before its due season, but nevertheless we are assured that several litigant parties are much dissatisfied with being put to great expense in paying counsel's fees, journeys of attorneys, and the cost of taking their witnesses and keeping them at the assize town several days, when the result is an enforced compromise or arbitration,—which if just and right,—might be ordered at the Judge's Chambers in London without delay and at little expense.

## NOTES OF THE WEEK.

### POST-OFFICE MONEY ORDERS.

On the 1st of September, and thenceforth, the following regulations in regard to the issue and payment of money orders will come into force:—

1. When the remitter of a money order presents a written requisition for the order, he will not be required (even when the order is not made payable through a bank) to give more than the surname and the initial of one Christian name of the payee, though he will have the option of giving the name more fully; and it will suffice if the payee's signature be as full as the name given by the remitter, and be not in any way inconsistent therewith.

2. The payee will not be henceforth required to furnish the address of the remitter, though he will still have to give the remitter's name.

Although it will no longer be necessary to enter the remitter's address in the advice, the remitter will still be required to furnish it, and postmasters must, as heretofore, enter it in their journal.

### VACATION ATTENDANCE AT THE JUDGES' CHAMBERS.

Mr. Justice *Willes* will attend Chambers (Common Pleas), every *Tuesday* and *Friday* until further notice, at *eleven o'clock* in the forenoon.

### LAW APPOINTMENT.

Mr. *William John Slade Foster*, Solicitor, has been appointed Town Clerk and Clerk to the Magistrates of Wells, in the room of the late Mr. Robert Davies.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

*In re Suitors' Fund, ex parte Routledge.*  
Aug. 1, 1855.

#### SUITORS' RELIEF ACT.—COMPENSATION TO CLERKS OF ACCOUNT.

Held, that the clerks of accounts whose office was abolished by the 15 & 16 Vict. c. 87, s. 36, are not entitled to an increased compensation under s. 45 upon the death of the former chief clerk, although it was the practice of the office for an increase of salary upon such event.

*Rolt* and *J. H. Palmer* appeared in support of this petition on behalf of one of the clerks of accounts, whose office was abolished by the

15 & 16 Vict. c. 87, s. 36, for an increased compensation under s. 45,<sup>1</sup> upon the recent

residue of the term of his natural life, in the same manner and out of the same fund as if this Act had not been passed; and every person now holding any freehold office or office for life, or during good behaviour, which is abolished by this Act, and in respect of which any fees of office are by law or custom payable, shall be entitled to receive from and after the passing of this Act, during his natural life, an annuity equal to the average annual amount of such fees of office during the three years next preceding the passing of this Act; and the amount of such annuity shall be determined by the Lords Commissioners of her Majesty's Treasury, in the same manner, and shall be paid out of such funds and in such manner, as is by this Act directed with respect to the compensations hereby provided to be given to officers whose salary or emoluments shall be taken away or diminished by the operation of this Act, or by the rules and orders to be thereunder made."

<sup>1</sup> Which enacts, that "Every person now holding any freehold office or office for life or during good behaviour which is abolished by this Act, and in respect of which any annual or other fixed salary is by virtue of any Act of Parliament or otherwise by law payable, shall be entitled to receive such salary during the

death of the former chief clerk. It appeared to have been the practice in the office before the passing of the Act, for the clerks to receive an increase in salary upon the death of a senior clerk.

The Lord Chancellor (without calling on Taylor for the Sutors' Fund) said, that the salary referred to in s. 45 meant the salary the parties were in receipt of at the passing of the Act, and the petition was therefore dismissed.

### Lords Justices.

*Higgins v. Earl of Shaftesbury.* July 31, 1855.

PAYMENT OF FUND TO TWO INSTEAD OF THREE TRUSTEES.—VARIATION OF DECREE.

*By a decree of Vice-Chancellor Stuart, a sum of money was directed to be paid out of Court to the defendant and two other persons to be applied in payment of certain debts, legacies, &c. The defendant was about to leave England. The decree was varied (the Vice-Chancellor having risen for the Long Vacation) by the Lords Justices by directing the payment to the two other parties upon the defendant's solicitor giving an undertaking on behalf of the defendant and signing the registrar's book to the effect that the defendant would be answerable for the due application of the money as if it were paid to him jointly with his co-trustees, who would also undertake duly to apply the money.*

THIS was an application to vary the decree made herein by Vice-Chancellor Stuart, directing the payment out of Court of a sum of money to the defendant and two other persons, to be applied in payment of certain debts, legacies, &c. It appeared that the defendant was about to leave England and that the Vice-Chancellor had risen for the Long Vacation.

G. M. Giffard in support.

The Lords Justices said, that in general payment could not be made to two instead of three trustees, but that, upon the defendant's solicitor giving an undertaking on behalf of the defendant and signing the registrar's book to the effect that the defendant would be answerable for the due and proper application of the money, as if it had been paid him jointly with his co-trustees, the application would be granted. It would also be necessary for the two other parties to undertake duly to apply the money.

### Master of the Rolls.

*Calvert v. Emmet.* Aug. 1, 1855.

INJUNCTION ON BEHALF OF TENANT FOR LIFE TO RESTRAIN SALE BY MORTGAGEES OF TENANT IN REMAINDER.

*A testator gave an estate subject to a life interest to T., who afterwards mortgaged his interest therein, and the mortgagees, upon*

*his bankruptcy, proceeded to realise their security by a sale. The advertisement made no mention of the life interest, and the tenant for life moved for an injunction to restrain the same: The motion was refused with costs.*

THIS was a motion to restrain the sale of a farm near Halifax, in Yorkshire, which had been devised, subject to the life interest therein of Mr. and Mrs. Calvert, to Mr. Taylor. It appeared that Mr. Taylor had mortgaged his interest to the Halifax Joint-Stock Banking Company, who, upon Mr. Taylor becoming bankrupt, were desirous of realising their security. In the advertisements, however, they made no mention of the life estate, and Mr. Calvert, who had survived her husband, accordingly moved.

R. Palmer and Cairns in support; Follett, contra.

The Master of the Rolls said, that as the purchaser would take, subject to Mrs. Calvert's life interest, she could not suffer any injury, and the motion would be refused with costs.

### Vice-Chancellor Kindersley.

*In re Kiernan's Settlement.* July 31, 1855.

TRUSTEES' ACT, 1850.—APPOINTMENT OF NEW TRUSTEES.

*Under a settlement, real and personal estate was vested in two trustees in trust for sale and to pay the income of the proceeds to the wife for life, with remainder to the husband for life, remainder to the children, and in default thereof to the husband absolutely. And the settlement contained power to the wife, with the approbation of the surviving trustee, to appoint a new trustee. Both trustees were dead: An order was made under the 13 & 14 Vict. c. 60, for the appointment of two new trustees and for a vesting order. The heir-at-law of the surviving trustee was served and appeared.*

IT appeared that by the settlement on the marriage of Mr. and Mrs. Kiernan, certain real and personal estate was vested in two trustees in trust for sale and to pay the income of the proceeds to Mrs. Kiernan for life, with remainder to her husband, remainder to their children, and in default thereof to him absolutely. The settlement also contained a power to Mrs. Kiernan, on the death of a trustee, with the approbation of the surviving trustee, to appoint a new trustee.

Both trustees were now dead, and this petition was presented under the 13 & 14 Vict. c. 60, for the appointment of two new trustees and for a vesting order. The heir at law of the surviving trustee was served with the petition and appeared.

Nichols in support; J. H. Cooke for the heir-at-law.

The Vice-Chancellor made the order as asked.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—"Still attorneyed at your service."—*Takepaw.*

SATURDAY, SEPTEMBER 8, 1855.

### LIMITED LIABILITY.

#### RESULT OF THE RECENT ACT AND ITS DEFECTS.

OUR readers are aware that the Legislature has passed one only of the two Bills, by the united operation of which the principle of Limited Liability was intended to have been completely established. In our view, they have passed the wrong Bill; though, perhaps, it was the one in some respects the most pressing. The dropped Bill (the Partnership Amendment Bill) aimed at the repeal of the rule of *Waugh v. Carver*, under which participation of profits rendered the participator liable to the whole debts of the concern, although he was no party to the contract with, and utterly unknown to, the creditor. The Bill that has become law was merely to apply the general principle of the other Bill to those large partnerships which because of their size are only allowed to be carried on under the Joint-Stock Companies' Acts,—and certainly it would have been more reasonable to have set up the principle of Limited Liability as a universal rule of our law before proceeding to arrange its application to the one exceptional class of partnerships supposed (incorrectly perhaps) to require some special regulation.

The late period of the Session to which the Government had allowed these bills to be postponed, made it necessary for them to drop one of the two: and as they have for a twelvemonth past almost entirely suspended the granting of Charters, the Board of Trade, no doubt, felt they should be pressed beyond endurance if they did not pass the one which would remove their difficulty as to Charters, and so selected the

Bill, which in principle should have been second, as the one to take the lead. Mr. Lowe, who is now appointed Vice-President of the Board of Trade,<sup>1</sup> has shown (as we stated in a former article) a more thorough understanding of the subject than perhaps any other Member of Parliament, and we cannot doubt that he will take care the other measure is passed next Session, probably in a simpler and better shape than that in which it stood in the late Session. Were it not for personal reasons (his speeches on this subject, and the like) attaching to that very able Member of Parliament, we should not have been surprised to find that the dropped measure was never revived at all, now that the other is passed. The way with all our Governors, whatever party they belong to, is never or almost never to bring in a Government Bill unless it relieves them from some personal difficulty or from that "much asking," which led the unjust judge in the parable to redress his suitor against her adversary.

The Joint-Stock Companies Limited Liability Bill, as passed, was not improved after its earlier stages. The House of Lords, often so useful with reference to Law Bills, damaged the one we are considering, by inserting clauses meant to require that the companies to be advantaged shall consist of at least twenty-five partners, who shall have paid up at least one-fifth of their capital; and further, if a now existing company purposes to use the new law, that its "complete solvency" shall have been ascertained by the Board of Trade. We say that the clauses were *meant* to effect

<sup>1</sup> Since this Article was put in type, we see Mr. Lowe has been removed to another department.



these objects, for they are insufficient really to effect them. Indeed, to a considerable extent, the objects are not capable of being effected by the Legislature at all: and if they were capable, it would be very injudicious in a Legislature to interfere as to them. The insufficiency of the recent Act is manifest in many points: for instance, if there are twenty-five partners at starting, twenty-three of them may sell their shares to the other two, the day after complete registration; or, again, when 20 per cent. has been paid up it can be returned to the shareholders in the shape of a dividend as soon as they please. Or, again, the solvency of a "going" concern almost entirely depends on the valuation of the assets; that is to say, on how much of the debts due to it are good—how much doubtful—how much *bad*. How can any one except the manager of the concern be able to ascertain this point? will Mr. Lowe, as new Vice-President of the Board of Trade, be able to find it out? If he cannot, neither can his nominee under the present Act. Creditors are not conjurers, and have not the gift of second-sight. All his auditor can do is to find out whether the books are properly posted and cast. An auditor can only say that 2 and 2 and 2 and 2 make 8. He cannot make out whether the entries in these books present a true picture of the affairs of the concern. He may be able to say that the picture is a perfect work of art; but whether painted from nature and reality, or from fancy only, and how far the colouring is flattered, he cannot tell. Now, surely the Board of Trade must know this to be, in the nature of things, an impossibility; and if they do, they ought not to have allowed a Bill to pass with such clauses; and by allowing it to pass impliedly to have undertaken to the world to do this impossibility for it. They should have moved that the word "auditor" be struck out of the Bill, and the word "mesmerizer" be substituted, and so marked their sense of the folly of such a provision.

Mr. Lowe, we suppose, will have, under this Act, to sign certificates that his Board has *ascertained* the "complete solvency" of these "going" joint-stock companies,—he knowing all the while it is utterly *impossible* that he or any one else could do anything of the sort. But the Public does not know this impossibility;—they know him to be a very able, and believe him to be a very honest man; and seeing his signature to these "certificates of complete solvency," they will trust a concern which otherwise they would not

have dealt with. And all this because the Board of Trade chooses to undertake, and to pretend to the Public, to do; and solemnly to certify that it has done, a thing which it must know is utterly incapable of being done at all. Why will the Board of Trade not carry fully and unreservedly the principle of Free Trade and "unrestricted competition" into the subject-matters it has under its inspection? We ask this question because the Joint-Stock Companies' Acts are to be reviewed and consolidated next Session, and this question must be satisfactorily disposed of before that valuable piece of work can be effectually entered on.

Up to the *point of magnitude* at which limited liability joint-stock companies are allowed to come into existence, ordinary limited partnerships must, in mere justice to private traders, be allowed to exist. It would be monstrous to give the competing joint-stock company the *monopoly* of the limited liability principle. But this most obvious consideration seems to have escaped our legislators. Throughout the debates, most of those friendly to the principle, seem to have not perceived that whatever organization may be best for a company is a *question for the company itself to decide*, and for nobody else,—least of all for the State. The company organizing itself, with the fear of recalcitrant creditors and public distrust in its eyes, will suit its organization to its peculiar need: and, if the doctrines of political economy are true, its peculiar need is, with reference to the peculiar need of the public also. No external body can attempt to do this work for it without public injury. A noble Lord, bearing an honoured name—DENMAN—in a letter to *The Times* of the 16th August, with reference to the part he took on this measure in his place in the House of Lords, says that "the number of twenty-five appeared to me to be not too large for a company with shares of ten pounds each, only twenty per cent. to be paid up, and with two directors, one or two auditors, and a solicitor." He further states,—“There appears to me to be a general advantage in having it known that a large amount of capital is paid up, and that a larger sum is still forthcoming upon calls, and the precise amount of each ought to be authentically published, and thus larger profits in the case of success, and a more available dividend in case of failure would be tangible than in the case of supposed millionaires.”

Lord Denman is probably right, as a general rule, in his premises; but the conclusion he draws does not flow from them.

Companies must not have a compulsory *quasi* Vaccination Act passed as to them. They must make their regulations themselves in the natural way. These points may be advantageous to a company: they will be so to most companies; and if so, they will be adopted by them voluntarily. There is an old saying, that Parliament can do anything but make a man a woman and *vice versa*. It has to learn, however, that there is a great deal else it cannot do; and Lord Denman, with his compeers, has fallen into the error of over-estimating its power in usefully modifying the tendencies of nature and commerce. In former articles we have pointed out the serious mischief which arises from the Legislature ever entertaining considerations of the kind alluded to by him in his letter. We have indicated the important office which, by the constitution of things and the provision of nature, or we might strictly say, of Providence, the creditor has to perform for the public; and have shown that every legislative interference with the rule of "*caveat creditor*," is fraught with mischief to the commercial world and to commercial morals. This is a most interesting and important question of economy, and one on which, as far as we know, our leading economists have very insufficiently and inaccurately treated. We cannot repeat our former arguments here. There is no one, we believe, with clearer views upon it than Mr. Lowe. We trust that they will be made apparent throughout the whole structure of the proposed new Joint-Stock Companies' Law. If so, the new Law will be much more like the American Laws of incorporation than our present Joint-Stock Acts. All *inter se* provisions and partnership regulations (that is to say, almost the whole of the provisions at present contained in these Acts) will be left to each joint-stock company to settle for itself: and instead of *compelling* all companies to adopt one form of organization, it will be enacted, that *so far as the provisions of the Act are not varied by special bye-laws in each individual case*, the rules of joint-stock companies shall be as follows.

We know the case of a bank consisting of seven partners only. Because they are more than six they have been forced by the Board of Trade Bank Act, to have a charter; and the Board of Trade, under this charter, has compelled them to have directors, annual and semi-annual meetings, auditors, minutes, secretaries, and all the extensive apparatus useful enough in the case of a company of 500 members; but in their case purely absurd. It is very strange to us that Free-

traders cannot feel what are the corollaries of their own principles. We are not so much surprised at Lord Denman, or any other lord, not seeing that the Legislature had got beyond its due province in attempting to deal with the points he refers to in his letter, because this interference principle has been of late so much the habit of the Legislature that individual legislators might well take its propriety for granted; but we are surprised that a permanent department like the Board of Trade, with these difficulties so perpetually brought before it, and with instances such as that of our bank intimately known to them, should not have seen and proclaimed this "*laissez faire*" principle long ago. If the principles on which trade is to be conducted should be left untrammelled, *à fortiori* so should the organization of the trading concerns by which it is to be carried on.

## LAW REFORMS OF THE LAST SESSION.

It has been the Parliamentary custom for leading members of the great party opposed to the Government for the time being to address the House of Lords on the short-coming of the administration. Lord Lyndhurst has frequently, towards the close of a Session, given a masterly summary of the various measures of Law Reform which have been announced in the Queen's Speech, or in respect of which they have taken credit for introducing, but which they have failed or been unwilling to carry. Somewhat earlier than on former occasions,—within about three weeks of the end of the Session,—Lord Lyndhurst took the opportunity of asking the Lord Chancellor for some explanation of the withdrawal of some important legal measures and the slow progress of others. This course was fair towards the ministry, for it allowed them time to mature some at least of the numerous bills which were pending before the respective Houses of Parliament.

Our summary of the measures relating to the law (see *ante*, p. 314), which were withdrawn, negatived, or postponed, will show the final result of the Session, so far as the Profession may be supposed to feel an interest.

In the debate to which we refer, Lord Lyndhurst said, his noble and learned friend upon the Woolsack had introduced a Bill for altering the Law of Divorce, and also for the purpose of transferring the jurisdiction from the Ecclesiastical Courts to the Court of Chancery.

After that Bill had proceeded a certain length, part of the Bill was withdrawn by the voluntary act of his noble and learned friend, and the other part in consequence of some opposition to the Bill on the part of a right rev. prelate. He stated as his reason, that the Testamentary Bill had been thrown out in the other House; and his noble and learned friend, in answer to the Chief Justice of the Queen's Bench, said, that the Government would use their utmost endeavour to pass a Bill on that subject. It was a singular circumstance that that Bill went down last year from that House on the 7th of April, but not a single attempt was made by the Law Officers of the Crown to proceed with it. He had also stated that the Government would be prepared to introduce in the present Session a large measure of reform, embracing the whole of the Ecclesiastical Courts. He did not find that either in that or the other House of Parliament, any attempt had been made to redeem that pledge. His noble and learned friend had not even introduced a Bill of divorce or any Bill relating to matrimonial cases. The Testamentary Jurisdiction Bill had gone down at an early period of the previous Session to the House of Commons. It was therefore perfected, but, notwithstanding this circumstance, and that Parliament met in December, the Law Officers of the Crown did not think proper to bring it forward until the end of May, and this Bill had consequently again fallen through and been withdrawn. These circumstances required some explanation. His noble and learned friend might mention the war as the cause of the abandonment of this Bill, but he did not see that either his noble and learned friend or the Law Officers of the Crown in the other House of Parliament had troubled themselves much about the complications of the Eastern Question. From circumstances that had come to his knowledge, he believed that this mode of proceeding might be explained by some want of understanding or co-operation between the Lord Chancellor and the Law Officers of the Crown.

His noble and learned friend had introduced a Bill for the *Registry of Deeds*, and for the purpose of shortening conveyances and simplifying titles. That Bill was fully considered and discussed, was referred to a Select Committee, and went down to the other House of Parliament with the approbation and sanction of his noble and learned friend and of that House. But what happened in the other House? The Bill was immediately opposed by the Law Officers of the Crown. The Solicitor-General said, that what was wanted was a Bill not for the registry of deeds, but of titles. The consequence was, that the Bill was referred to a Select Committee, and nothing more was heard of it from that time to this.

But that was not the only fact which showed the want of cordial co-operation between the Lord Chancellor and the Law Officers of the Crown in the other House. His noble and learned friend had issued a Commission for the *Consolidation of the Statute Law*. His

noble and learned friend was the President of that Commission, he sanctioned all its proceedings, and the Law Officers of the Crown also attended its meetings. The report of that Commission was laid on the table. On looking at that report, he found it signed by all the Commissioners except the Law Officers of the Crown. He therefore took it for granted that they differed from the Lord Chancellor upon that report. He relied upon this for substantiating what he stated,—that there was a want of co-operation and good understanding with respect to Law Reform between the Lord Chancellor and the Law Officers of the Crown. This had led to the greatest possible inconvenience, and it showed that without a good understanding between the Legal Authorities of the Government it was in vain to expect an amendment of the law. This was a most unsatisfactory state of things and required explanation; and he had made these observations to enable his noble and learned friend to make such explanations as he might think proper to offer to their lordships.

The Lord Chancellor said, that the first complaint of his noble and learned friend referred to the Testamentary Bill, and he truly stated that last Session he (the Lord Chancellor) had introduced that Bill. It was much considered by a Select Committee, and that Bill went down to the Commons, where certainly it did not receive approbation and did not become law. The course that he thought it best to take in the present Session was, that the Bill should originate in the House of Commons, and a great many objections in detail having been made to the Bill of last year, he consulted with the Solicitor-General, who was to take charge of it, and adopted some amendments likely to smoothen the passage of the Bill in the other House of Parliament. He was not prepared to state the day on which that Bill was introduced, but he was certain his noble and learned friend was mistaken in supposing that it was not brought in until the latter part of May. He believed it was brought in in March, but to this he could not pledge himself. At all events it was prepared quite early enough, and it was introduced as soon as the state of public business made it possible to proceed with it. And although he should not fall back upon the war as a justification for doing nothing, he thought that the state of business arising out of the discussions about the war, which had taken up four-fifths of the Session, would explain why so dull a subject had been so little able to obtain a hearing.

His noble and learned friend ought to be the last person to express great surprise and to complain that this Bill had not received the sanction of the Legislature, because the same thing had happened to him also when he was Lord Chancellor. In 1843, a similar measure was introduced into the House of Commons and failed; in 1844 it was introduced into this House but did not pass; and it was again introduced in the following Session. He hoped that the same course would be again adopted,

and that the measure would be introduced next Session, and then the matter would be placed in the same position that it occupied during the Chancellorship of his noble and learned friend. It was said that he had promised a comprehensive plan of testamentary reform. Now the fact was this:—He had been taunted with doing only half his duty in introducing a measure for the reform of testamentary jurisdiction; he had been told that he ought to deal with the whole subject, viz.,—testamentary jurisdiction, matrimonial jurisdiction, and Church discipline jurisdiction,—and he accordingly undertook to get measures prepared which would embrace all these matters.

The Matrimonial Bill had been prepared, but the subject was so connected with the Testamentary Bill that it was impossible for him to introduce it until he could see how the Testamentary Court was to be constituted. A Bill had been framed with great care upon the subject of Church Discipline, and had been submitted to the Bishops; but there were great differences of opinion with respect to it, and the subject was attended with many difficulties, and the measure had not therefore been presented to the House. He had been assured by the Solicitor-General that the Testamentary Bill was read a second time with every prospect of success, but the attention of the other House had been so absorbed by subjects of overwhelming interest that it was found impracticable to pass it.

With regard to the suggestion that there was not a cordial co-operation between the Law Officers of the Crown and himself, and the example adduced by his noble and learned friend of the Registration Bill, which the Solicitor-General did not support in the other House, he must say that his noble and learned friend was labouring under a mistake. The Solicitor-General thought the Bill did not go far enough, and it was referred to a Select Committee, of which Mr. Walpole and other gentlemen besides the Law Officers were members, which recommended the appointment of a Royal Commission to inquire into the whole subject. He felt bound to issue such a Commission, and the Solicitor-General had assured him that the labours of the Commission were so far advanced that in the course of the ensuing recess they would not only produce a report recommending a better system of registration but would also frame a measure which would be introduced next Session.

His noble and learned friend further complained of the sluggishness of the Government in not having introduced any measure of Law Reform during the present Session. He denied that accusation. A Chancellor or a minister was not doing good by simply introducing measure after measure, which he called measures of reform; but if he found that anything was going wrong it was his duty to provide a remedy. The statement that no measure of reform had become law during this Session, was certainly near the truth. But early in the Session he had introduced a measure giving

extended *Summary Jurisdiction* in cases of *Petty Offences*. That Bill had passed this House and had been referred to a Select Committee of the House of Commons, and his right hon. friend the Home Secretary had assured him on Saturday last, that he had not the least doubt of its becoming law. It must, however, be remembered, that at the present moment the House of Commons were more anxious to forward Bills which they had originated than to proceed with those which had been sent down from this House.

Another measure which would be of essential benefit to the mass of the community, although it might not excite a great deal of popular approbation, had been sent down to the other house. It was the Bill for getting rid of the necessity for private Acts of Parliament in dealing with *Settled Estates*, and the Solicitor-General who had taken charge of it had assured him, that he did not doubt that it would eventually be passed. It had been referred to a Select Committee, because there was a notion in the other House that it would have the effect of permitting the enclosure of Hampstead Heath. It had not the slightest reference to that subject, but the insertion of a clause had been proposed which would obviate all difficulty of the kind.

They had been told that the *Charity Commission* had done nothing since its appointment. He protested against the truth of that assertion, for the Commissioners had done a great deal of good in an unobtrusive manner, and he was satisfied that they would do more good if their powers were further extended. He had consequently introduced a measure extending their powers. It had been sent down to the other House, and he should be much disappointed if it did not become law this Session.

He had also introduced a Bill for reforming the University of Cambridge. He therefore felt not guilty of the charge made by his noble and learned friend having introduced many important measures which promised to become law before the end of the Session; and he thought his noble and learned friend would have done better to wait until the Session drew nearer to a close before making his complaint. He much regretted that the Attorney and Solicitor-General had not thought fit to sign the report of the Statute Law Commission, but he had no authority to call upon them to sign it, if they did not think proper to do so.

He should be glad to be the means of introducing next Session measures which had failed in the present, but he thought that his noble and learned friend's attributing blame to him because the House of Commons did not pass the Testamentary Jurisdiction Bill was really attributing blame to him to which he was not obnoxious. In the course of the present Session he had received two reports which he had anxiously considered. One of these reports had reference to the *County Courts*, and would necessarily give rise to legislation, and indeed a Bill had been partly prepared, but he could not with any propriety have introduced it

during the present Session, for it was impossible that it could have passed into law.

The other report was as to the *Sale of the Encumbered Estates Court, Ireland*. He was in hopes that he might have introduced a Bill on this subject this Session, but the changes recommended by the report were so important, and on the whole so useful, that they would require considerable consideration. He might have obtained some credit for introducing this Bill, but he felt that it would have been obtaining credit under false pretences, for the Bill could not have passed this Session.

He had also, at the suggestion of his noble and learned friend, Lord Brougham, introduced a bill which had passed their lordships' house for *additional Sessions and Assizes*; the Bill, however, was objected to by the other House, and required more consideration than could be given to it this Session. He had been in communication with the Secretary of State for the Home Department, and was informed that though this Bill would not pass into law this Session, yet the Royal Prerogative would be brought to bear on the subject, and additional Commissions would be issued for several counties.

Lord Lyndhurst said, that his noble and learned friend had replied to him by a *tu quoque*, but this did not apply to his case, for when he held the office now held by his noble and learned friend he did his utmost to pass the Testamentary Jurisdiction Bill. His complaint was not that they had failed in passing Bills, but that they had let the last two Sessions pass without making any attempt to pass any Bills. His statement was, that not a single Bill for the improvement of the law which had been proposed by her Majesty's Government had received the Royal Assent. His noble and learned friend had met this statement, not by contradicting it, for that was impossible, but by stating that a considerable number of Bills had passed their lordships and had been sent to the other House; and though they had not passed a single Bill during the six months, yet his noble and learned friend flattered himself that during the four or five remaining weeks of the Session they would pass these Bills. His noble and learned friend was much more sanguine on this point than he was; for he took what had been done as a good picture of what was likely to take place, and had no hope that the Bills would be passed this Session.

Lord Brougham trusted that his noble and learned friend (Lord Lyndhurst) would early next Session apply himself to one of the subjects to which he had directed his observations, viz.,—to that of the Ecclesiastical Courts Jurisdiction, particularly with regard to the matter of divorce; for the state of the law with regard to this subject was in a most shameful and disgraceful state. His noble and learned friend, among the many great and invaluable services which he had rendered to his country, could not render it a greater service than by taking it up with all the weight which

was justly due to his authority in that House, the country, and the Profession, the subject which had been referred to.

Lord Lyndhurst said, that he could not understand why there should be a difference between the Law of Divorce in the northern and southern parts of the island. He believed that in Scotland the Law of Divorce worked exceedingly well, and he saw no reason why it should not be extended to England.

Lord Brougham was convinced that if his noble and learned friend would peruse the evidence and the report of the Committee, over which he (Lord Brougham) presided a few years ago, he would find abundant reasons for holding more firmly the opinion which he had now expressed.<sup>1</sup>

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages:—

- Purchasers' Protection, 18 Vict. c. 15,—p. 5.
- Lunacy Regulation Act, c. 13,—p. 32.
- Commons' Inclosure, c. 14,—p. 32.
- Newspaper Stamp Duties, c. 27,—p. 137.
- Sewers (House Drainage), c. 30,—p. 139.
- House of Commons' Proceedings, c. 33,—p. 139.
- Income Tax, c. 20,—p. 197.
- Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.
- Administration of Oaths Abroad, 18 & 19 Vict. c. 42,—p. 175.
- Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.
- Common Law Pleadings, c. 26,—p. 176.
- Infants' Marriage Settlements, c. 33,—p. 198.
- Palatine of Lancaster Trials, c. 45,—p. 241.
- Bills of Exchange and Promissory Notes, c. 67,—p. 256.
- Cinque Ports, c. 48,—p. 258.
- Commons Inclosure (No. 2), c. 61,—p. 275.
- Incumbered Estates Acts (Ireland) Continuance, c. 73,—p. 276.
- Places of Religious Worship Registration, c. 81,—p. 276.
- Friendly Societies, c. 63,—pp. 296, 319, 342.
- Limited Liability, c. 133,—p. 316.
- Despatch of Business, Court of Chancery, c. 134,—p. 338.
- Charitable Trusts, 1855, c. 124,—p. 358.

## CHARITABLE TRUSTS, 1855.

18 & 19 VICT. c. 124.

16 & 17 Vict. c. 137, and this Act to be construed together; s. 1.

Provision as to the salary of one of the Commissioners repealed; s. 2.

<sup>1</sup> From *The Times* of July 21.

Power to appoint additional inspectors ; s. 3.

The Acts of the Board, how to be authenticated ; s. 4.

Entries in and extracts from the books of the Board, how to be authenticated ; s. 5.

The powers of the Commissioners and inspectors to inquire into charities extended ; s. 6.

Power to require trustees and others to attend and be examined ; s. 7.

Precepts or orders for the preceding purposes, how to be made ; s. 8.

Persons not complying with requisitions, &c., to be deemed guilty of a contempt of the Court of Chancery ; s. 9.

Power to apportion parochial charities after division of parishes ; s. 10.

Evidence as to annual income of any charity not exceeding 30*l.* ; s. 11.

The official trustees of charitable funds may be empowered to call for transfers to them of stock, &c. ; s. 12.

Notices to be given of certain orders of the Board ; s. 13.

Proceedings upon the receipt of objections or suggestions ; s. 14.

The official trustee of charity lands constituted ; s. 15.

Power to acting trustees to grant leases ; s. 16.

Appointments of official trustees of charitable funds regulated ; s. 17.

Such trustees to have perpetual succession, and may hold funds in that name ; s. 18.

Funds to vest in the official trustees for the time being ; s. 19.

The official trustees to keep banking account ; s. 20.

Mode of drawing on the banking account ; s. 21.

Trustees may transfer stock to official trustees ; s. 22.

As to disposal of principal moneys paid to them ; s. 23.

All dividends and interest due to the official trustees of charitable funds to be placed to their banking account ; s. 24.

For the regulation of transfers and payments to or by the official trustees ; s. 25.

Copies of orders affecting the account of the official trustees to be sent to the Board ; s. 26.

Indemnity to the bank and others ; s. 27.

Dividends on stock in name of official fund trustees to be carried to account free from income tax ; s. 28.

Restrictions of charges and leases of charity estates ; s. 29.

Sinking fund to be provided for paying off mortgages in lieu of provision in mortgage deeds ; s. 30.

Extension of power of Board as to compromise of claims ; s. 31.

Board may authorise payment for equality of exchange or partition ; s. 32.

Power to ascertain lands charged with rents to charities ; s. 33.

Expenses of exchanges and partitions, and determining application of charges ; s. 34.

Incorporated charities and trustees for charities, may re-invest in land ; s. 35.

Order of Board for investments to be carried into effect, and cost to be raised ; s. 36.

Board may direct official trustees to convey land, &c. ; s. 37.

Leases, &c. to be valid, notwithstanding disabling Acts ; s. 38.

Board may approve schemes for letting charitable property ; s. 39.

Power to refer bills of costs in charity matters to taxation ; s. 40.

Construction of section 27 of the 16 & 17 Vict. c. 137 ; s. 41.

Deeds, &c., relating to charities may be enrolled at the office, and copies to be evidence ; s. 42.

Construction of sections 55 and 59 of 16 & 17 Vict. c. 137 ; s. 43.

Amendment of section 61 of 16 & 17 Vict. c. 137, and other provision made as to the annual returns of accounts by trustees of charities ; s. 44.

Board may make orders as to delivery and publication of account by trustees, &c. ; s. 45.

Application of section 64 of 16 & 17 Vict. c. 137 ; s. 46.

Acts not to apply to Roman Catholic charities until 1st September, 1856 ; s. 47.

As to the term "charity ;" s. 48.

Act not to extend to Eton or Winchester ; s. 49.

Short title ; s. 50.

The following are the Title and Sections of the Act :—

An Act to amend the Charitable Trusts Act, 1853. [14th August, 1855.]

Whereas it is expedient to extend and amend the Charitable Trusts Act, 1853, as hereinafter provided : Be it therefore enacted, as follows :—

1. "The Charitable Trusts Act, 1853," hereinafter called "the principal Act," and this Act, shall be construed together as one Act, and any provisions of the principal Act inconsistent with this Act are hereby repealed.

2. So much of the principal Act (section 4) as provides that after the 31st day of March, 1857, an annual salary shall be paid to one only of the Commissioners besides the Chief Commissioner is hereby repealed.

3. It shall be lawful for her Majesty and her successors, under the Royal Sign Manual, to appoint additional inspectors (not exceeding three in number) for the purposes of this Act and the Charitable Trusts Act, 1853, and such additional inspectors shall hold office during pleasure, and shall be possessed of the same powers, authorities, and jurisdiction, and be entitled to the same privileges and emoluments, as the inspectors appointed under the said former Act of 1853.

4. Every Act of the Board may be sufficiently authenticated by the seal of the Commissioners, and the signature of their secretary, or in his absence of the chief clerk.

5. All orders, certificates, schemes, and other documents issued under the seal of the Board shall be deemed and taken to be the originals, and copies thereof shall be entered in the books of the Board, and all such entries may be sufficiently certified by the signature of the secretary, or in his absence of the chief clerk: Every order, certificate, scheme, and other document purporting to be sealed with the seal of the Board shall be received in evidence without further proof; and any writing purporting to be a copy extracted from the said books, and to be certified as aforesaid, shall be received in evidence in like manner.

6. The Board, or any Commissioner or inspector, such inspector acting under the authority of the Board, may require written accounts and statements and answers to inquiries relating to any charity, or the property or income thereof, to be rendered or made to them respectively by all or any of the following persons; that is to say,

Trustees or persons acting or concerned in the administration of the charity, its property or income, or in the receipt or payment of any moneys thereof:

Agents of any such trustees or persons:

Depositories of any funds or moneys of the charity:

Persons in the beneficial receipt of any funds thereof, or of any income or stipend therefrom:

Persons having the possession or control of any documents concerning the charity or any property thereof:

And the Board or the Commissioner or inspector may require the persons rendering or making any such account, statement, or answer to verify the same by oath or otherwise, and may administer such oath: Provided always, that nothing herein contained shall extend to give to the said Board or their inspectors any power of requiring from any person holding or claiming to hold any property whatsoever adversely to any charity, or free or discharged from any charitable trust or charge, any information, or the production of any deed or document whatever, in relation to

the property so held or claimed adversely, or any charitable trust or charge alleged to affect the same.

7. The Board, or any Commissioner or inspector acting as aforesaid, may require all or any such trustees and persons as aforesaid to attend before them respectively at such times and places as may be reasonably appointed, for the purpose of being examined in relation to the charity, and to answer such questions as may be proposed to them, and to produce upon such examination any documents in their custody or power relating to the charity or the property thereof, and may examine upon oath or otherwise all such persons and all persons voluntarily attending, and may administer such oath: Provided always, that no person shall be obliged to travel in obedience to any such requisition more than ten miles from his place of abode.

8. All requisitions made under the foregoing authorities shall be made respectively by the order of the Board, or by precept under the hand of the Commissioner or inspector making the same.

9. Any person refusing or wilfully neglecting to comply with any such requisition, or with any order of the Board, made under the provisions of this Act or the principal Act, or destroying or withholding any document required to be produced or transmitted by him, shall be taken to be guilty of a contempt of the High Court of Chancery, and shall be liable to be attached and committed by such Court, on summary application by the Commissioners to the same Court or to any Judge thereof, and shall pay such costs attending such contempt as the said Court or Judge shall direct: Provided always, that the Court may at any time discharge, on such terms as it may deem just, any person attached or committed on any such application, or on any application made under section 14 of the principal Act.

10. Where any parish or ecclesiastical district entitled to the benefit of a charity has or shall have been divided into separate parishes or ecclesiastical districts, and no apportionment of charities originally applicable to the parish or district so divided shall have been made by Parliament or other competent authority, the Board, in respect of all charities the gross annual income whereof does not for the time being exceed 30*l.*, may apportion the benefit of the charity between each new parish or district, or any portion thereof taken from the parish or district originally entitled to the whole benefit, and the remainder of such last-mentioned parish or district, in such manner and such proportions as, upon a consideration of the purposes of the charity, the population of each parish or district, and other circumstances, they may think fit, and may also apportion the principal endowments between such parishes or districts, if it be thought fit, and may appoint separate trustees of any part of the endowments.

11. The certificate of the Board, that according to their judgment the gross yearly in-

come of any charity does not for the time being exceed 30*l.*, shall be sufficient evidence of the amount of such annual income for the purpose of determining the jurisdiction under the foregoing provision.

12. Any Court or Judge having jurisdiction to order the transfer of stock in the public funds, or stock or shares of any public company, to the official trustees of charitable funds, shall have power also to authorise such trustees to call for a transfer of and to transfer such stock or shares, and may also order the payment to the same trustees of any principal moneys of any charity, under the same circumstances in which the transfer of stock to them may now be ordered.

13. No order for apportioning the benefits of any charity shall be made by the Board until after such public notices shall have been given of the proposal to make the same as the Board may consider expedient for insuring publicity in each parish or district in which the charity is or ought to be applied, or among all persons interested therein, nor until after the expiration of one month from the publication of such notice; and every such notice shall contain (so far as conveniently may be) sufficient particulars of the proposed order to show the objects thereof, and shall prescribe a time within which any objections thereto may be stated or transmitted to the Board.

14. All objections which may be made to any proposed order shall be considered by the Board, who may suspend the making thereof for further inquiry, or may modify the same, as may be found expedient; and a copy of every such order when made shall, in the case of any local charity, be deposited for the space of one month in some convenient place within the parish or one of the parishes or the district in which the charity is applicable, and also be open to inspection at the office of the Commissioners, and such publicity shall be given thereto among all persons interested in the charity as the Board shall consider expedient; or if the charity be not local, then a copy of such order shall be open to inspection at the office of the Commissioners, and public notice thereof shall be given in such manner as to the Board shall seem fit, and in cases where there is a special visitor, notice shall be given to him.

15. The secretary for the time being of the Board shall be a corporation sole by the name of "The Official Trustee of Charity Lands," for taking and holding charity lands, and by that name (instead of the name of "Treasurer of Public Charities") shall have perpetual succession; and all land, or estates or interests in land, now vested in the "Treasurer of Public Charities" by that name shall become, upon the passing of this Act, and by virtue thereof, vested in like manner and upon the same trusts in "The Official Trustee of Charity Lands," and all provisions of the principal Act which have reference to the treasurer of public charities shall operate as if the name of the

"Official Trustee of Charity Lands," had been used therein instead of the name of "Treasurer of Public Charities."

16. The acting trustees of every charity, or the majority of them, provided that such majority do not consist of less than three persons, shall have at Law and in Equity power to grant all such leases or tenancies of land belonging thereto, and vested in the official trustee of charity lands, as they would have power to grant in the due administration of the charity if the same land were legally vested in themselves; and all covenants, conditions, and remedies contained in or incident to any lease or tenancy so granted shall be enforceable by and against the trustees or persons acting in the administration of the charity for the time being, and their aliases or assigns, in like manner as if such lands had been legally vested in the trustees granting such lease or tenancy at the time of the execution thereof, and had legally remained in or had devolved to such trustees or administrators for the time being, their aliases or assigns, subject to the same lease or tenancy.

17. The Lord Chancellor may from time to time by writing under his hand appoint any persons to be, jointly with the secretary for the time being of the said Board, the official trustees of charitable funds, and remove any such trustees, and every such appointment or removal shall be published in the *London Gazette*.

18. The present official trustees of charitable funds, and their successors, to be so appointed, shall have perpetual succession by the name of "The Official Trustees of Charitable Funds," and may hold by that name stock in the public funds, and stock and shares of any public company, securities, and moneys, which shall respectively devolve to their successors, the official trustees of charitable funds for the time being, without transfer or assignment.

19. All stock in the public funds vested in the joint names of Henry Morgan Vane, Thomas Hare, and Walter Skirrow, Esquires, the present official trustees of charitable funds, shall upon the passing of this Act be transferred by the Governor and Company of the Bank of England from their names to the account of the official trustees of charitable funds.

20. The official trustees of charitable funds, shall, for the purposes of their trust, keep a banking account in their official name in the books of the Governor and Company of the Bank of England, and the secretary of the Board shall keep separate accounts of the moneys held upon such account, and belonging to each separate charity.

21. All orders for payment of any money held upon such banking account shall be signed by one at least of the official trustees of charitable funds, not being the secretary of the Board, and also by the secretary, and shall be countersigned by one of the Commissioners, or shall be otherwise signed or authenticated in such manner as the Lord Chancellor shall from time to time by order under his hand



direct; and such orders shall be a sufficient authority to the bank paying the same for all such payments.

22. Any trustee or other person may, on obtaining an order of the Board for the purpose, transfer any stock or pay any money to the official trustees of charitable funds in trust for any charity.

23. All principal moneys belonging to any charity directed to be paid to the official trustees of charitable funds shall be paid to their account at the bank, and, subject to any order of the Court or Judge or of the Board by which respectively the payment shall have been authorised, shall be forthwith invested in the public funds in the names of the official trustees of charitable funds, for the benefit of the charity to which they shall belong.

24. The dividends arising from all stock in the public funds standing in the name of the official trustees of charitable funds shall from time to time be received by the Governor and Company of the Bank of England, under the authority of this Act, for the credit of the said official trustees, and shall be placed to their banking account accordingly; and all dividends and interest arising from any other stock, shares, or securities standing in the name of or held by the official trustees of charitable funds shall be paid only to the Governor and Company of the Bank of England for the account of the same trustees; and the said trustees shall from time to time execute to the said governor and company all such powers as shall be found necessary for enabling them to receive and give effectual discharges for the last-mentioned dividends and interest.

25. No transfer of any stock, shares, or securities shall be made to the official trustees of charitable funds, nor shall any money, other than the dividends or interest of any such stock, shares, or securities as aforesaid, be paid to their account; except in pursuance of an order of the Court of Chancery, or of some Judge thereof, or of a district Court of Bankruptcy or County Court, or of the Board; and no transfer of any such stock, shares, or securities shall be made by the official trustees, except under the Order of such Court or Judge, or under the order of the Board signed by two Commissioners, or authenticated in such manner as the Lord Chancellor from time to time by any order under his hand direct; and no transfer to or by the official trustees shall be permitted by the Governor and Company of the Bank of England or any other company contrary to this provision.

26. Copies of all orders made by any Court or Judge for any transfer, deposit, or payment of stock, shares, securities, or moneys to or by the official trustees of charitable funds shall be forthwith transmitted to the Board by the parties obtaining such orders.

27. Every order made under the principal Act or this Act, requiring or authorising the transfer, payment, or deposit of any stock, shares, securities, or moneys to or with the trustees of any charity or the official trustees

of charitable funds, or conferring a right to call for or to make such transfer, shall be a complete indemnity to the Governor and Company of the Bank of England and all companies and persons for any Act done pursuant to such order; and the said Governor and Company and other companies and persons shall be required to give effect or to conform to every such order, and it shall not be necessary for them to inquire concerning the propriety of such order, or the jurisdiction of the Court or Judge or the Board to make the same.

28. All dividends arising from any stock in the public funds standing in the name of the official trustees of charitable funds, and which shall be certified by the Board to the Governor and Company of the Bank of England to be exempt from the property or income tax, shall be paid or carried to the banking account of the official trustees without any deduction of such tax; and all dividends arising from any stock in the public funds standing in any other names or name, and which the Board shall certify to the Governor and Company of the Bank of England to be subject only to charitable trusts, and to be exempt from such tax, shall be paid without any deduction thereof.

29. It shall not be lawful for the trustees or persons acting in the administration of any charity to make or grant, otherwise than with the express authority of Parliament, under any Act already passed or which may hereafter be passed, or of a Court or Judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the Board, any sale, mortgage, or charge of the charity estate, or any lease thereof in reversion after more than three years of any existing term, or for any term of life, or in consideration wholly or in part of any fine, or for any term of years exceeding 21 years.

30. So much of section 21 of the principal Act as requires a compulsory provision to be inserted in every mortgage for the payment of the principal money borrowed by annual instalments, and for the redemption and reconveyance of the mortgaged estates within the period of not more than 30 years, is hereby repealed; but the Board authorising any mortgage to be made of any charity estate shall make such provisions, by the same or any other order, as to them may seem necessary, for directing the trustees or persons administering the charity to discharge the principal debt or any part thereof by such yearly or other instalments within 30 years from the date of the security as to the same Board may seem fit, or to form an accumulation or sinking fund out of the income of the charity for discharging the principal debt or any portion thereof within the same period, and shall give directions as to the investment and accumulation of such fund, and the trustees for the time being, or persons administering the charity, shall carry such order into effect.

31. The 23rd section of the principal Act shall extend to authorise a compromise or adjustment of any claim, demand, or cause or suit against any charity, or the trustees of administrators thereof, and the order of the Board in relation thereto shall have the like effect as in the case of any compromise or adjustment for which provision is made by the said section.

32. The Board may authorise the application of any funds belonging to any charity in payments for equality of exchange or partition, or in payment of any expenses incident thereto, or may authorise the trustees to raise any money for such purposes by mortgage of any land acquired on such exchange or partition, or belonging to the charity.

33. Where there shall be uncertainty as to the specific part of any lands out of which any rent, annuity, or other periodical payment, not exceeding the yearly sum of 10*l.*, charged upon some part of the same lands, for the benefit of a charity, shall be payable, it shall be lawful for the Board, upon the application of the trustees or persons acting in the administration of the charity, and with the consent of the persons interested, according to the aforesaid definition of "persons interested," in the same lands, to determine by their order the land charged with such rent, annuity, or other periodical payment, which shall thenceforth stand charged with such rent, annuity, or periodical payment accordingly, to the exoneration of the residue of such lands therefrom.

34. The expenses incident to the application for and procuring of any such order of exchange or partition, or order determining the land charged with any rent, annuity, or periodical payment, shall be paid by the trustees or administrators of the charity, or by the other parties to such transactions, or by both, as the Board may direct.

35. Any incorporated charity, or the trustees of any charity, whether incorporated or not, may, with the consent of the Board, invest money arising from any sale of land belonging to the charity, or received by way of equality of exchange or partition, in the purchase of land, and may hold such land, or any land acquired by way of exchange or partition, for the benefit of such charity, without any licence in mortmain.

36. All orders of the Board for the investment of money coming to any charity or the trustees thereof or any sale, exchange, or partition shall be carried into effect by the trustees or persons administering the charity; and all moneys which the Board shall order to be provided out of any income or property of a charity for the payment of the costs of any such transaction shall be provided or raised by the trustees or administrators of the charity, and applied accordingly.

37. It shall be lawful for the Board to authorise or order and direct the official trustee of charity lands and the official trustees of charitable funds respectively to convey lands, and to assign, transfer, and pay over stocks,

funds, moneys, and securities, as the Board shall think expedient.

38. All leases, sales, exchanges, partitions, and transactions authorised by the Board under the principal Act or this Act shall be valid and effectual, notwithstanding the Act of the 13 Eliz. c. 10, the Acts of the 14 Eliz. cc. 11 and 14, the Acts of the 18 Eliz. cc. 6 and 11, the Act of the 39 Eliz. c. 5, and the Act of the 21 James 1, c. 1, or any disabling Act applicable to the charity the estates whereof shall be the subject of any such transaction.

39. It shall be lawful for the Board to prepare, and under their seal to approve of, any scheme for the letting of the property or any part of the property of any charity; and all leases granted by any trustees or persons acting in the management of any charity, pursuant to or in conformity with such scheme, shall be valid.

40. The Board may order the bill of costs or charges claimed by any attorney or solicitor on account of business conducted or transacted by him on behalf of any charity, or the trustees thereof, to be examined and taxed by the Taxing Masters of the Court of Chancery, or by the proper Taxing Officers of any of the Superior Courts at Westminster, who shall proceed to examine and tax the same bill accordingly; and if the same shall be reduced upon such taxation by the amount of one-sixth part or more of the amount thereof, the costs of the taxation shall be paid by such attorney or solicitor, but otherwise out of the funds of the charity by the trustees thereof; and the Board may, after being satisfied as to any bill that it contains exorbitant charges, order any such bill to be so taxed, notwithstanding that the same may have been paid by the trustees of the charity at any period not more than six calendar months previously to such order; and any amount taxed off any such paid bill shall be a debt due from the attorney or solicitor to the trustees of the charity, and shall be forthwith paid by him to such trustees accordingly.

41. Section 27 of "The Charitable Trusts Act, 1853," shall be construed and operate as if the words "and the trustees of the charity shall be legally authorised to purchase and hold such land" had been omitted therefrom; and incorporated trustees of any charity shall be competent to purchase and hold lands for the purposes mentioned in the same section without licence in mortmain.

42. Any deed, will, or document relating to any charity may be enrolled by the Board in books to be provided and kept by them for that purpose at their office, and a copy of any such deed, will, or document made from such books, and certified under the hand of the secretary or one of the Commissioners, shall be received as evidence of the contents of the same deed, will, or document.

43. The 55th and 59th sections of the principal Act shall be construed and operate as if the words "The Office of the Board" had been inserted therein in the place of the words

"the Office in London of the Registrar of County Courts Judgments."

44. Section 61 of "The Charitable Trusts Act, 1853," except so much thereof as enacts that the trustees or persons acting in the administration of every charity shall, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such charity, shall be repealed as to all accounts which such trustees or administrators shall not have been bound to render before the passing of this Act; and the trustees or administrators of every charity shall, on or before the 25th day of March, 1856, prepare and make out and transmit to the Board an account of the endowments then belonging to the charity, showing in the case of realty not in hand the manner in which the same is let or occupied, and in the case of personally the existing investment or employment thereof, and in what names such investments are made; and such trustees or administrators shall also on or before the 25th day of March next after the acquisition of any endowment not included in the foregoing account prepare and make out, in like manner, and transmit to the Board, a similar account of such last-mentioned endowment, and in case of any alienation, or charge, or transfer of any real or personal estate of the charity, shall on or before the 25th day of March then next following transmit to the Board an account of such alienation, charge, or transfer, and such trustees or administrators shall also, on or before the 25th day of March in every year, or such other day as may be fixed for that purpose by the Board, or as may have been already fixed for rendering the accounts thereof required by the principal Act, prepare and make out the following accounts in relation thereto; (that is to say,)

- (1.) An account of the gross income arising from the endowment, or which ought to have arisen therefrom during the year ending on the 31st day of December then last, or on such other day as may have been appointed for this purpose by the Board;
- (2.) An account of all balances in hand at the commencement of the year, and of all moneys received during the same year on account of the charity;
- (3.) An account for the same period of all payments;
- (4.) An account of all moneys owing to or from the charity, so far as conveniently may be:

which accounts shall be certified under the hand of one or more of the said trustees or administrators, and shall be audited by the auditor of the charity, if any; and the said trustees or administrators shall, within 14 days after the day appointed for making out such accounts, deliver or transmit a copy thereof to the Commissioners at their office in London, and in the case of parochial charities shall de-

liver another copy thereof to the churchwarden or churchwardens of the parish or parishes with which the objects of such charities are identified, who shall present the same at the next general meeting of the vestry of such parishes, and insert a copy thereof in the minutes of the vestry book; and every such copy shall be open to the inspection of all persons at all reasonable hours, subject to such regulations as to the said Board may seem fit; and any person may require a copy of every such account or of any part thereof, on paying therefor after the rate of 2d. for every 72 words or figures.

45. The Board may from time to time make such orders as they may think fit in relation to the delivery or transmission of the said accounts, and the forms of such accounts, and such orders shall be executed by all trustees and persons from whom the accounts to which they may relate are required.

46. The 64th section of the principal Act shall apply as well to members of any charity within the operation of that Act as to members of any charity exempted from the operation thereof.

47. Neither this Act nor the principal Act shall, until the 1st day of September, 1856, extend or be in any manner applied to charities or institutions the funds or income of which are applicable exclusively for the benefit of persons of the Roman Catholic persuasion, and which are under the superintendence and control of persons of that persuasion, nor shall anything in this Act extend to any of the cases which by the 62nd section of the principal Act are excepted from the operation thereof.

48. In the construction of the principal Act and this Act the word "charity" shall include every institution in England or Wales endowed for charitable purposes, but shall not include any charity or institution expressly exempted from the operation of the Act of 1853, and words applying to any person or individual shall apply also to a corporation, whether sole or aggregate.

49. Nothing in this Act or in the principal Act contained shall extend to the Colleges of Eton and Winchester, or either of them.

50. This Act may be cited as "The Charitable Trusts Amendment Act, 1855."

## MERCANTILE LAW.

### SECOND REPORT OF THE COMMISSIONERS.

To the Queen's Most Excellent Majesty in her High Court of Chancery.

WE, your Majesty's Commissioners appointed to inquire and ascertain how far the mercantile laws of the different parts of the United Kingdom may be advantageously assimilated, and also whether any, and what, alterations and amendments should be made in the Law of Partnership as regards the question of the limited or unlimited responsibility of partners, having in the last year made our report on the subject of the responsibility of partners, humbly

certify to your Majesty that we have proceeded to consider the other matters submitted to our investigation, and present to your Majesty this our further report.

It appeared to your Majesty's Commissioners, at the commencement of our labours, that any material change in an established system of Mercantile Law must be attended with some inconvenience, and therefore that assimilation merely for the sake of assimilation was not to be recommended, but ought to be resorted to only where it would remove some inconvenience that had been actually experienced, or might reasonably be anticipated, from the present state of the Mercantile Laws in the different parts of the United Kingdom, or effect some clear and safe improvement in the law of each.

In order to obtain information on this subject, we stated a considerable number of differences between the Mercantile Laws prevailing in different parts, and caused such statement to be printed and circulated amongst legal and mercantile men, requesting them to point out any other differences which might occur to them, and any practical inconvenience which they had known to arise from existing differences.

In the answers which we received there is a remarkable paucity of statements as to inconveniences actually experienced; and in dealing with many instances of difference we have recommended assimilation, not because evils had been traced to the existing state of the law, but because we think it probable that inconveniences may hereafter arise. The printed papers so circulated, and the answers received, we propose to print in an Appendix to this Report, in such a manner as to show in one view the answers received to each question. At the same time, in order to exhibit a connected view of the more important of those differences, we have prepared, and also propose to print in the Appendix, a more matured statement of them. But in this report itself we have noticed those differences alone as to which we recommend that some assimilation should be made.

Your Majesty's Commissioners entered upon the consideration of the differences in the Laws of Bankruptcy in England and Ireland and in Scotland, with the view of reporting whether, or how far, those laws might be advantageously assimilated. But while our investigation was in progress, we found that, on the one hand, a commission had been issued by your Majesty to certain other persons to inquire generally whether any alterations were required in the Bankruptcy Law of England, as existing under the Bankrupt Law Consolidation Act, 1849; and that on the other hand, extensive alterations in the Bankruptcy Laws of Scotland were proposed in a Bill which was introduced in the House of Lords, and entertained for discussion by their lordships. It then appeared to your Majesty's Commissioners that there would be a want of propriety, as well as of practical utility, in our proceeding further with an inquiry as to an assimilation of the two systems

of laws. We deemed it our duty, however, before coming to any resolution on the subject, to submit the matter to the Lord Chancellor; and the opinion with which his lordship favoured us having entirely coincided with our own, we, with his concurrence, discontinued our deliberations as to the Laws of Bankruptcy, and that subject is not included in our report.

The matters, as to which we propose some alteration in the existing laws, may be arranged under the following heads; viz., I. SALE OF GOODS. II. DEBTOR AND CREDITOR. III. PRINCIPAL DEBTOR AND SURETY. IV. BILLS AND NOTES. V. BAILMENT OR DILIGENCE PRESTABLE. VI. SHIPPING. VII. PARTNERSHIP. VIII. LIMITATION AND PRESCRIPTION.

### I. SALE OF GOODS.

#### *Constitution of the Contract.*

According to the Law of Scotland, a contract of sale of goods is binding on the parties, although it be entered into only by verbal agreement; and if the parties embody their bargain in writing, or do any other external act to indicate the completion of the agreement, no such precaution, however useful it may be in facilitating a proof of the contract if it should afterwards be disputed, is essentially necessary to its constitution. The case is different in the Laws of England and Ireland. By the 17th section of the English Statute of Frauds (29 Car. 2, c. 3), and the 13th section of the Irish Statute of Frauds (7 Wm. 3, c. 12), it is enacted that "No contract for the sale of any goods, wares, or merchandizes for the price of 10*l*. sterling or upwards shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised."

We are of opinion, that no party to a contract of sale of goods should be entitled to withdraw from the bargain, merely because it has not been accompanied or followed by writing, or some other ceremony. For obvious reasons, the important business of buying and selling ought not to be trammelled with unnecessary solemnities; and such transactions, if they be satisfactorily proved by legal evidence of any kind, ought to be binding. While it appears from all the evidence we have received from Scotland that no inconvenience is experienced in that country from this extensive class of transactions being thus left untrammelled, the evidence as to the practical working of the English and Irish rule is of a different tendency. The Manchester Chamber of Commerce state to us:—"This Board would give a decided preference to the Scotch Law. The practice of Manchester has always been in accordance with it. In the immense transactions which take place here, the use of a written con-

tract is the exception rather than the rule." And the Dublin Chamber of Commerce informs us, that "In the opinion of this Council the Law of Scotland is to be preferred. The vast majority of mercantile contracts are made without any writing; and it is evident that they ought to be capable of being established by 'parol or other legal evidence.' for the law as it now stands in England and Ireland is obviously advantageous to the dishonest trader, and prejudicial to the honest one."

This general contravention of the rule of the Laws of England and Ireland in the practice of the great commercial emporiums of these countries, whereby most of the innumerable sales which are there daily taking place are left out of the protection of the law, indicates that the requirements of the 17th section of the English Statute of Frauds, and the corresponding section of the Irish Statute, are not now adapted to the practical management of commercial business. We therefore recommend that that portion of those Acts should be repealed, and that the Laws of England and Ireland should, in this respect, be assimilated to the simpler rule of the Common Law observed in Scotland.

#### *Evidence of Payment of the Price.*

There is a difference among these laws of an opposite kind, as to the mode of proving payment of the price of goods. In England and Ireland such payment may be proved by either written or oral evidence; but in Scotland there must be either written evidence of payment, or an unqualified admission of payment, by the seller, or those in his right, on oath under a judicial reference (a proceeding which is observed in the practice of Scotland), excepting in the case of a ready money transaction, and excepting also where the payment does not amount to *8l. 6s. 8d.* sterling (100*l.* Scots), when it may be proved by any kind of legal evidence. Although purchasers, for their own sakes, generally take written receipts for payments; yet, when a receipt happens not to be taken, or to be lost or destroyed, and a demand is made on the buyer to pay for the goods a second time, he should not be compelled to yield to such an unjust demand, if he has it in his power to prove the payment by satisfactory oral testimony. And if, on some occasions, witnesses may be uncertain as to the precise purposes to which payments made in their presence were intended to be applied, the party on whom the burden of proof lies would suffer the disadvantage, as he must always establish an alleged unvouched payment by satisfactory evidence. We recommend that as to this matter the Law of Scotland should be assimilated to the Laws of England and Ireland.

#### *Reserved bidding at Auction.*

In Scotland, when goods are sold by auction, the seller cannot legally be a bidder, either directly or by employing another person to bid for him, unless he shall have expressly reserved a right to do so in the conditions of

sale, and shall have publicly announced such reservation at the time of the sale. In England and Ireland the seller may employ one person to bid for him without notice to the other bidders. We are of opinion that neither of these rules is unexceptionable. The Scottish rule exposes the seller to the risk of collusive agreements among intending bidders to abstain from competing, so that each of them may participate in the purchase at an under value; and there is reason to believe that such collusion is often practised. On the other hand, the English rule enables the seller, by the employment of a puffer, to lead third parties to bid a price beyond the value of the article. Both of these evils would probably be avoided in a great measure by allowing the seller to have one bid, but only one, either directly or indirectly, unless an express stipulation to the contrary be made a condition of the sale, and be publicly announced at the time.

The Laws of England and Ireland differ from the Law of Scotland, as to the liability of buyers to be deprived of goods sold to them, by third parties claiming a preferable right thereto, in two classes of cases, as to which, we think, the laws may be assimilated with advantage.

#### *Stolen Goods.*

1. Where goods, which have been stolen, and afterwards sold and delivered to a *bond fide* purchaser, are claimed by their proper owner the Law of Scotland gives effect to that claim. It entitles the owner to obtain restitution of his property, leaving the purchaser to seek his redress from the seller or the thief. The Laws of England and Ireland are the same, unless the sale of the goods takes place in market overt, in which case a sale of stolen goods to a *bond fide* purchaser is effectual, and can only be defeated by the conviction of the thief on the prosecution of the owner. In every such question between an owner and a *bond fide* purchaser, one of two innocent parties must suffer, in consequence of the fault of a third party; and the question is, which of them should be the loser? Strong reasons may be urged in favour of both parties; but the preponderance appears to be in favour of the owner of the goods. On principle, he should not lose his right of property in his goods without either his consent or his fault. And the purchaser, by making due inquiry as to the history of the goods, might often ascertain whether or not they have been honestly acquired by the seller, or those from whom he received them. And although the rapidity, with which commercial transactions require to be managed, cannot always allow time and opportunities for such inquiries, and *bond fide* purchasers of goods from parties in the full possession of them ought not to be unnecessarily exposed to the risk of a defect in the seller's title; yet the interests of commerce itself require, in several cases, that even a purchaser should be subject to such a risk. The numerous classes of mercantile transactions—the hiring or the carriage of goods for example—under which the owners of goods entrust the

possession of them to others for temporary purposes, could not be safely entered into, if such temporary possessors could effectually defraud the owners by selling the goods. This is not permitted by the law of any part of the United Kingdom; and as buyers are thus subjected to the risk of defects in the title of sellers, even when the possession of the latter has originally been honestly obtained, there is less hardship in subjecting them to such risk when the possession has been obtained by theft. And practically due caution on the part of purchasers in dealing only with parties of good character will, in general, be a sufficient protection against risk of this kind. As a matter of public policy also the Scottish rule is preferable, because it is generally easy for a thief to transfer the stolen goods to an accomplice, under the disguise of a *bond fide* sale to the latter, without there being means to detect and expose the fraud. Experience shows that there is no effectual security against frauds of this kind by protecting only those sales which are made in market overt. This is particularly the case in the city of London, where every day, except Sunday, is held to be a market day, and every shop is held to be a market overt as to the kinds of goods in which the occupant usually deals. We think, therefore, that the distinction in favour of sales in market overt ought to be abolished; and that as to this matter also the Laws of England and Ireland ought to be assimilated to that of Scotland.

*Rights of Execution Creditors of the Seller and of the Buyer, after Sale and before Delivery of the Goods.*

2. In England and Ireland goods, which are sold by the owner, but left in his possession by the buyer, cannot be seized at the instance of an execution creditor of the seller, in satisfaction of debt owing by him; but may be seized in the hands of the seller by an execution creditor of the buyer for payment of a debt of the latter. This is the case whether the buyer has or has not paid the price; but if the price has not been paid, the goods can be seized by an execution creditor of the buyer, only subject to the seller's lien for the price. In Scotland, goods in the predicament under consideration may be attached by an execution creditor of the seller, whether the buyer has or has not paid the price; and such execution creditor of the seller is preferred to the buyer himself, and also, of course, to an execution creditor of the buyer attaching the undelivered goods in the hands of the seller. But equity and expediency do not support the claim of the seller's execution creditor, because the effect of the first buyer leaving the subject of his purchase in the hands of the seller is not to facilitate the practice of a fraud or deception by the seller against his creditor. Such creditor is not defrauded nor deceived by the sale, because when he trusted the seller without obtaining any lien or security for his debt, he trusted only to the personal credit of his debtor, and not to any

particular parcel of goods being appropriated for his payment, and left his debtor at full liberty, in the exercise of his right of ownership, to sell the goods at his pleasure. Indeed, when the debtor is a merchant, such goods as are part of his stock in trade are left in his hands for the very purpose of his selling them in the usual course of business. We think, therefore, that as to this matter, the rule of the Laws of England and Ireland is preferable to that of the Scottish Law.

*Sale after issue of Warrant for Execution against Seller, but before Seizure of the Goods.*

In another respect the Laws of England and Ireland as to this matter appear to us to require modification. It is thereby held that the execution creditor of the seller is preferable to the buyer, although the sale take place before the actual seizure of the goods under the writ, if, before the sale, the writ has been placed in the hands of the sheriff. This is unfair to the buyer, as, until the seizure take place, there is nothing to warn him that the owner of the goods has been deprived of his right to sell them; and indeed the owner himself may often be in ignorance of this. In Scotland, although an execution creditor of the seller is in one respect more favourably dealt with, the warrant for execution has no such effect, by being merely placed in the hands of the officer who is to execute it, or until he actually proceeds to carry the execution into effect; and if during the intermediate period there be a *bond fide* sale of the goods, and the possession of them be obtained by the buyer, they cannot thereafter be attached by a creditor of the seller. We think that this is equitable and expedient.

We therefore recommend that the Laws of the United Kingdom should be assimilated as to this matter of a competition between a buyer and an execution creditor of the seller, by making it the rule everywhere, that the right of the buyer of goods to obtain delivery of them, and the right of an execution creditor of the buyer to seize them in the hands of the seller, should be preferable to that of an execution creditor of the seller; and that the validity of a sale should not be affected by the writ or warrant being merely placed in the hands of the sheriff or officer by whom it is to be executed, if the seizure or attachment of the goods have not also taken place before the sale.

*Right of the Seller to retain the Goods to secure a General Balance due to him from the Buyer.*

In the case where the buyer, without receiving possession, actual or constructive, of the goods, sub-sells them to a third party, the subvendee is entitled according to the Laws of England and Ireland to obtain delivery of the goods from the original seller, on paying to him the price, or any part of the price, which may have been left unsettled; and the latter cannot withhold the goods from the subvendee, to secure payment of any debt which

may be owing to him by the primary vendee, other than the price remaining unpaid, unless there has been an express agreement to that effect between these parties before the subsale. According to the Law of Scotland, the original seller in such a case is entitled to retain the goods from the sub-vendee to secure payment—not only of the price stipulated in the original sale, or any part of that price, which may not have been paid,—but likewise of any other debt which may be owing or become due to him, from the primary buyer, although such other debt may have no connexion with the goods or the sale thereof; and although there have been no agreement to that effect between the parties. We are of opinion that the rule of the Laws of England and Ireland is consistent with justice and expediency; because by the original contract of sale the seller undertakes an obligation to deliver the goods on receiving payment of the price, and the sub-vendee as the purchaser and virtual assignee of the primary buyer's rights under that contract, ought to be entitled to enforce the primary seller's obligation of delivery, on performance or tender of performance of the counterpart of that contract; and also because such a right of retention as is recognised in the Law of Scotland has practically an effect similar to that which would be produced by a general lien in favour of a seller over the goods sold by him, although abstractedly that right of retention is of a different character from a right of lien, as after-mentioned. We think it injurious to commerce to expose *bond fide* purchasers to the risk of such claims; and we recommend that as to this matter the Law of Scotland should be assimilated to the Laws of England and Ireland.

In making this recommendation, we do not mean to suggest that any further change should be made in two general principles in Scottish jurisprudence, already referred to, of which the rule under consideration is thought to be a legitimate consequence; namely, the rules,—that the right of property in goods is not transferred from a buyer to a seller by a contract of sale (as is the case in England and Ireland), until this is followed by tradition or delivery of the goods,—and that in certain circumstances a seller has a *right of retention* of the goods so long as the right of property thus remains with him, until any counter obligation whatever in which the buyer may be bound to him shall be performed. This right of retention is, as already mentioned, different in its nature and effects from a right of lien. It is described as follows in Lord Moncrieff's opinion in the case of *Melrose v. Hastie and Company*, 7th March, 1851, Session Cases XIII., p. 810: "It is no case of lien that is maintained by Hastie & Co. (the original sellers), but a right of retention under the existing Law of Scotland. The nature of this right of retention is explained very clearly in a few sentences in Mr. Erskine's work. It arises in various circumstances, and is quite separate and distinct from any right of com-

pensation, and it is recognised in many cases precisely where compensation cannot be pleaded. The right, in the plain sense and equity of it, consists simply in this, that when one man has goods in his possession which he is bound to deliver to another, but that other is debtor to him, whether for money or goods, he cannot demand delivery of the particular goods in the possession of the first until he shall pay the debt due by him to that party. It is not necessary that these counter obligations should arise out of the same contract. If the obligation exist, it is a matter of plain equity that the one cannot demand delivery until he shall pay the debt due by him to the other who holds the goods. It is a right of retention, not merely for payment of the price of the particular goods, but for payment of any general balance existing between the parties at the time when the demand of delivery is made." What we have suggested is—not that these principles in the Law of Scotland should be abolished or changed, for they are extensively interwoven with other departments of the law of that country, the consideration of which does not fall within the scope of our commission, but merely,—that their consequences should not be pushed so far as to expose a *bond fide* sub-vendee, in the circumstances under consideration, to the risk of liability for such extraneous claims.

Such assimilation, however, would require to be guarded by a proviso that in Scotland the original seller should be entitled to attach the goods while in his own hands for payment, or security, of such extraneous debts, by the diligence of arrestment, or pouding, as effectually as any other creditor of the primary buyer could do so; and that such attachment should be as effectual against any sub-sale, not intimated to him at the time of the attachment, as if it had been at the instance of a third party. Such a provision is not necessary at present, because the original seller's right of retention renders him preferable, even as to the extraneous debts owing to him by his immediate buyer, to other execution creditors of the latter; but a law which would deprive him of this privilege should not leave him as to these extraneous debts in a worse position than that of the other creditors of the primary buyer.

#### *Specific performance, or Damages.*

If the seller fail to deliver the goods at the proper time, he may be sued by the buyer, according to the Law of Scotland, to deliver those goods, and also to indemnify the latter for the loss, if there be any, occasioned to him by the delay; and the seller has not the option of paying the value of the goods, or damages for breach of contract, and withholding the goods themselves, if it be in his power to deliver them. The buyer has the alternative remedy of suing either for performance of the contract, or for damages for breach of contract. According to the Common Law of England and of Ireland, the buyer cannot in general enforce delivery of the goods; and his remedy

practically resolves itself into a claim of damages, whether he sues specially for non-performance of the contract, or brings an action of detinue for the goods themselves, or an action for the conversion of them. But in England under the 78th section of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), any of the Superior Courts of Common Law at Westminster, or a Judge or Baron of such Courts, has a discretionary power, on the application of the plaintiff, in any action for the detention of any chattel, to order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel upon paying the value assessed.

We see no reason why a buyer of goods should not be entitled to compel the seller to perform specifically his obligation to deliver them in terms of the contract; or why, when such performance is in his power, he should have the option of contravening his engagement, and merely paying damages to the buyer. The Common Law Procedure Act affords a partial remedy in England; but it does not go far enough, and does not extend to Ireland. And we recommend that on this subject the Laws of England and Ireland be assimilated to the Law of Scotland.

#### Warranty.

There is also a difference in the laws of the different countries as to the seller of goods being under an implied obligation to warrant them against latent faults. If a specific article be sold for a full price, and if the fault be so latent as not to be observable at the time of the sale, the buyer on discovering the fault may, in Scotland, return the article, and is not bound to pay the price, and he may insist on its being returned to him if he has already paid it. There is an implied obligation on the seller to warrant that the article is of marketable quality, even against latent defects unknown to himself. In England and Ireland there is no such implied obligation incumbent on the sellers, except in particular circumstances,—as where there is a custom to that effect in a particular trade,—or where the article is bought expressly for a particular purpose, in which case there is an implied warranty that it shall be reasonably fit for that purpose. Perhaps the one rule cannot be said to be more or less just than the other; because the risk of latent faults is one of the elements which enter into the amount of the price, and that price may be expected to be adjusted, so as to be of greater or less amount, according as the party liable to this risk is the seller or the buyer. At the same time, as a matter of expediency, the English and Irish rule appears to be the preferable one, because the Scottish rule tends to create litigation, in consequence of the difficulty of ascertaining, in many cases, whether faults were latent or patent at the time of sale; and still more whether or not the faults were of such a kind as to render the goods of unmarketable quality; this being generally a matter

of conflicting opinion. As the rule of the Laws of England and Ireland thus, without doing any injustice, saves much litigation on such questions, we recommend that the Scotch rule be assimilated thereto. It must be understood that we are not here referring to cases where fraud is practised; for the laws of both countries afford redress against fraud.

[To be continued.]

## LAW OF ATTORNEYS AND SOLICITORS.

### COSTS OF SPECIAL PETITION TO TAX, ON NON-CONSENT TO COMMON ORDER.

It appeared that Mr. Pye and five other parties had employed Mr. Adamson as their solicitor, and that several applications for his bill of costs had been made but without avail. Mr. Pye's solicitor, on March 8, 1854, sent Mr. Adamson the common petition for the delivery of his bill and for its taxation, for his consent to an order, accompanied by a letter to the effect that, in case of his refusal a special application would be made, and of which costs would be asked against him. No consent had been given, and this special petition was accordingly presented.

The *Master of the Rolls* in granting the petition, ordered Mr. Adamson to pay the costs thereof. *In re Adamson*, 18 Beav. 460.

## LAW OF COSTS.

### OF TRUSTEES ON PAYMENT OF LEGACY INTO COURT.

THE executors and trustees under a will, set apart a sum of stock to answer certain legacies, and divided the residue. One of the legacies passed to a charity, consequently on no child of the tenant for life attaining 21, and the charity instituted a suit to secure it and for its payment into Court; *Held*, that the trustees were entitled to their costs as between solicitor and client, and the charity as between party and party, to be paid out of the capital.

*Governesses' Benevolent Institution v. Rushbridger*, 18 Beav. 467.

### OF PURCHASER ON PETITION TO PAY MONEY OUT OF COURT.

A purchaser paid the purchase-money into Court, and afterwards obtained a conveyance. A petition was subsequently presented for payment of the fund out of Court, and which was served on the purchaser, who appeared.



The *Master of the Rolls* said:—"When a purchaser has not obtained a conveyance, the fund in which he has an interest cannot be dealt with in his absence; but when he has got his conveyance, and is served with a petition for its distribution, he, having no longer any interest, should not appear, but should inform the petitioner that he has no claim on the fund. I can give the purchaser no costs."

*Barton v. Latour*, 18 Beav. 526.

## ENFRANCHISEMENT OF COPYHOLDS.

### TO LORDS OF MANORS AND THEIR STEWARDS.

I HAD always imagined, from the language of the recent Act for the compulsory Enfranchisement of Copyholds, that all expenses attending such compulsory procedure were to be borne by the *tenant*. I am therefore extremely surprised to learn that, in a recent case of enfranchisement of an estate of some considerable value, the Commissioners, under the legal advice of the Law Officers of the Crown, have held that all expenses of surveyors and of evidence adduced by the lord must be borne by *himself*, and not by the copyholder.

This is a most important consideration for lords of manors, and, as it appears to me, puts a construction upon the Act which was never intended by the Legislature.—More of this anon.

### A LORD OF A MANOR.

## SELECTIONS FROM CORRESPONDENCE.

### COURT OF CHANCERY.

Considering the great importance of the business transacted by the Chief Clerks in Chancery, whose office may be assimilated to that of Judges, it would be desirable if a title could be found for them more consonant with their high duties than that of Chief Clerk, which is by no means appropriate.

### CIVIS.

### SATURDAY HALF-HOLIDAY.

With reference to the meeting held at the Guildhall on the 16th instant, and the other demonstrations now being made in favour of closing business on the Saturday at 2 o'clock, allow me to say that the great objection amongst Solicitors to this proposition appears to be, that the Chancery and Common Law Courts do not rise, nor the offices close, till much later in the afternoon. I would therefore observe, that as it is now the Long Vac-

ation and all the offices closed by 2 o'clock, this objection cannot be urged, and would suggest that the present time will be a favourable opportunity for the Solicitors to give the proposition a trial, at least until the commencement of business next Term. G.

## NOTES OF THE CIRCUIT.

### EVIDENCE OF HAND-WRITING.—FORGERY.

A REMARKABLE action was recently tried on a bill of exchange for 500*l.* wherein the defendant denied his alleged hand-writing. The person who procured the bill to be discounted by a joint-stock bank swore to the defendant's signature in his presence for his accommodation, and other witnesses, acquainted with the defendant's hand-writing, stated their belief that the signature was his. The defendant was called and positively denied ever having signed this or any other accommodation bill. The cashier of the defendant's banker said he would not have paid a draft so signed, and he and other witnesses expressed their disbelief of the genuineness of the signature. A witness, peculiarly skilled in hand-writing, then deposed that he had examined the writing by a magnifying glass, and was decidedly of opinion that it was an imitated signature, parts of which had been touched up to resemble the original, and it had not the character of a natural signature. The jury found a verdict for the defendant.

This case reminds us of one a few years ago, in which we saw a test applied that turned the scale against a forged document. Nearly an equal number of witnesses had deposed *pro* and *con*, when at length the signature in question was compared with one that was unquestionably authentic; by holding one over the other against a strong light, they appeared to be actually identical in even the most minute particular. Now as no hand ever wrote twice alike in all respects, the forgery was detected; moreover by a magnifying glass the paper of the disputed document was in a comparatively rough state, as if the signature had first been traced in pencil and then copied in ink, and the pencil marks rubbed out.

## NOTES OF THE WEEK.

### LAW APPOINTMENTS.

Her Majesty has been pleased to appoint the Right Honourable *Robert Lowe*, Barrister-at-Law, to be her Majesty's Paymaster-General.—From the *London Gazette* of August 20.

*John Duke Coleridge*, Esq., Barrister-at-Law, of the Western Circuit, has been appointed Recorder of Portsmouth in the room of William Nathaniel Massey, Esq., M. P., now Under Secretary of State for the Home Department. Mr. Coleridge was called to the Bar 6th Nov. 1846.

*A. J. Stephens*, Esq., Barrister-at-Law, of

the Western Circuit, has been appointed Recorder of Andover, in the room of C. H. Belenden Ker, Esq. resigned. Mr. Stephens was called to the Bar 9th May, 1832, and was Lecturer on Common Law and Criminal Law at the Incorporated Law Society.

Mr. Morice, Solicitor, of Aberystwith, has been appointed Clerk to the Justices for the Har Division, and to the Trustees of the Aberystwith Harbour.

The Lords of the Treasury have appointed Mr. T. L. Donaldson, and Mr. James Wilkes, Commissioners for Inquiring into the Cost and Construction of Lunatic Asylums in Ireland.

Mr. Spencer Shelley has been appointed Secretary to the Commission. — *Civil Service Gazette.*

The Court of Directors of the East India Company have appointed Mr. William Ritchie,

of the Calcutta Bar, to be acting Advocate-General of India during the absence of Mr. Prinsep, with a reversion of the office when a vacancy occurs. — *Times.*

Mr. Sheriff Rose has appointed Mr. James Anderson Rose, Solicitor, to be his Under-Sheriff for the ensuing year.

The Right Hon. Sir George Grey, Bart., one of her Majesty's Principal Secretaries of State, has appointed the undermentioned gentlemen to set out the Wards and appoint the number of Vestrymen, under an Act passed in the last Session of Parliament, for the better local management of the Metropolis:—

Alexander Pulling, Esq., Barrister-at-Law.

Arthur John Wood, Esq., Barrister-at-Law.

George Bangh Allen, Esq., and

William Durrant Cooper, Esq., Solicitor.—

From the *London Gazette* of Sept. 4.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lord Chancellor.

*Desborough v. Harris and others.* July 28; Aug. 4, 1855.

INTERPLEADER BILL.—ADVERSE CLAIM.—POLICY OF INSURANCE.—COSTS.

H. insured the life of a party in an insurance company and became insolvent five years after he had assigned the policy to S. & Co. Upon the death of the insured, S. & Co. claimed the fund and sued the company. H. also threatened an action, and his assignee refused to assist S. & Co. in perfecting their title: Held, *varying the decision of Vice-Chancellor Wood, that the company could not file an interpleader bill, as H.'s interest passed to his assignee, whose conduct could not be construed into a counter claim. The bill was dismissed with costs as against him and S. & Co., but without costs as against H.*

*The decision of Vice-Chancellor Wigram in Fenn v. Edmonds, 5 Hare, 314, reversed.*

It appeared that in 1825 the defendant, Mr. Harris, effected a policy for 3,000*l.* in the Atlas Assurance Company on the life of Judith Grubb, which he assigned in 1829 to the defendants, Messrs. Sanders and Barnes, of Exeter. Mr. Harris became insolvent in 1834, and the defendant, Mr. Sturgis, was the assignee of his estate. Upon the death of Judith Grubb in 1853, Messrs. Sanders and Barnes brought an action against the company claiming the amount of the policy, which was disputed by the insolvent, who also threatened to sue the insurance company, who thereupon by their secretary filed this interpleader Bill. The Vice-Chancellor Wood having decreed in favour of Messrs. Sanders and Barnes, and ordered Mr. Sturgis to pay the costs of suit, this appeal was presented.

W. M. James and Rasch for the plaintiff; Rolt and Bazalgette for Messrs. Sanders and Barnes; Headlam and Tripp for the insolvent; Solicitor-General and Osborne for the assignee.

The Lord Chancellor said, that the foundation of the right to file an interpleader bill depended on the fact of there being two or more conflicting claims to the property in question, and that whenever the difficulty in deciding as to the rightful owner, was caused by no fault of the stakeholder, he was entitled to bring the money into Court, and leave the claimants to establish their right. The question then arose, whether there was an actual claim here. With respect to Harris there could be none, as whatever interest he had passed to his assignee. But when his claim came to be considered, it could not be called adverse to that of Messrs. Sanders, as it could only arise after their undisputed assignment from Harris had been satisfied. This decision was adverse to that of the late Vice-Chancellor Wigram in *Fenn v. Edmonds*, 5 Hare, 314, but if correctly reported, the doctrine there laid down could not be supported. All that Mr. Sturgis had done was to decline to assist Messrs. Sanders in perfecting their title, and the decree would therefore be varied, by directing the bill to be dismissed with costs as against Messrs. Sanders and the assignee, but without costs as against Harris.

### Lords Justices.

*In re Thistlethwaite's Trust.* July 27, 1855.

WILL.—CONSTRUCTION.—“UNMARRIED.”—WIDOW.

*A testator gave an annuity to his daughter during the joint lives of herself and her mother, and an increased annuity if at the*

in the Masters in Chancery Abolition Act, 15 & 16 Vict. c. 80, are extended to the junior clerks appointed under this Act (s. 2).

## 2nd. *Transfer and Regulation of the Business of the Report Office.*

The Office of Master of Reports and Entries is abolished from the first vacancy, or from such other period before a vacancy as the Lord Chancellor, with the advice of the Master of the Rolls, may direct (s. 5). After such abolition the business of the office (except such part as is transacted by the entering clerks) shall be carried on by the Clerks of Records and Writs, who shall discharge the duties belonging to the office of Master of Reports and Entries. The business of the entering clerks is to be carried on by such entering clerks, who are to be styled "The Entering Clerks to the Registrars," under the superintendence of the senior Registrar, subject to the rules and regulations of the Lord Chancellor, with the advice of the Master of the Rolls (s. 6). The 29th section of 15 & 16 Vict. c. 87, relating to the duties of the Clerk of Reports is now repealed (s. 7).

The offices of the two Clerks of Reports are continued under this Act, and upon any vacancy the Lord Chancellor may fill it up; and if more than two clerks be requisite, the Lord Chancellor, with the advice of the Master of the Rolls, may appoint additional clerks (s. 8).

The Act does not repeal so much of the Suitors' Relief Act as relates to the countersigning by the present Master of Reports and Entries of notes or cheques of the Accountant-General, nor as to other duties which the Lord Chancellor may direct to be performed by him (s. 9).

## 3rd. *Extension of Jurisdiction at the Judges' Chambers.*

The 16th section of the Act recites, that by divers Acts of Parliament the Court of Chancery is empowered to make orders in respect of the disposition of trust funds and other matters under its jurisdiction, upon petition presented, or motion made in a summary way without bill, but such orders cannot be made on application at Chambers: it is therefore now enacted, that the business to be disposed of by the Master of the Rolls and Vice-Chancellors at Chambers shall comprise such of the matters in respect of which the Court is empowered to make orders in a summary way, as the Lord Chancellor, with the advice of the Master of the Rolls and the Vice-Chancel-

lors or two of them may, by any general order direct.

This section cannot of course be carried into effect until such general order shall be made.

## 4th. *Administration of Oaths by Solicitors.*

It will be recollected that a clause was introduced, during the progress of the Bill, to prevent the solicitors, who are Commissioners to administer Oaths in Chancery, from acting away from their places of business, unless in case of sickness of the deponent; and it was proposed by such clause, that the Commissioner should be entitled to a fee of 10s. (like the Record Clerk), for such attendance.<sup>3</sup> The clause was successfully opposed, not on account of any personal interest of the solicitor but for the convenience of the suitors and their witnesses.

The present Act, however, contains a material section, whereby persons wilfully taking any false oath, or making an affirmation or declaration before any solicitor authorised by the 16 & 17 Vict. c. 78, are subject to all the penalties of perjury *whether the oath, &c., shall or shall not have been taken or made at a place at which, under the provisions of the last-mentioned Act, the oath, &c., might lawfully be taken or made.* But the Commissioners must truly state in the jurat or attestation at *what place* the oath, &c., has been taken or made (s. 15).

It would appear from this enactment, that the person who wilfully swears falsely will be liable to prosecution, although the Commissioner may have administered the oath out of his proper jurisdiction. Thus the offender will not escape; but we apprehend that a Commissioner who wilfully exceeds his authority may be held responsible as for a contempt of Court.

## 5th. *Increase and apportionment of Salaries; and grant of Pensions and Compensations.*

By the 3rd section, the Lord Chancellor may direct the salaries of the chief clerks to be increased from the 2nd November, 1855, to the full amount authorised by the 15 & 16 Vict. c. 80, viz., 1,500l.

The 10th section continues the salary of the present Master of Reports and Entries.

By the 11th section, on the abolition of

<sup>3</sup> We presume that the Taxing Masters will allow this fee of 10s. whenever the Commissioner is required to attend elsewhere than his own office.

the office of Master of Reports, in case any of the Clerks of Records and Writs shall be required to discharge the duties of such Master of Reports, and the Lord Chancellor, with the advice of the Master of the Rolls, shall deem the duties too extensive in proportion to their present salaries, they may receive such addition (not exceeding 200*l.* a year each) as the Lord Chancellor shall direct; but such additional salaries are to cease in the event of the vacancy now existing being filled up by the appointment of a fourth Clerk of Records.

The 4th section authorises the apportionment of the aggregate amount of the salaries which the junior clerks to the chief clerks receive collectively, between the junior clerks, in such proportions as the Lord Chancellor (with the advice of the Judge to whose Court such chief clerk is attached) may think fit. Then the 12th section regulates the salaries to be paid to the two Clerks of the Report Office, apportioned also as the Lord Chancellor may direct, not exceeding amongst them all a salary of 250*l.* each.

Power is then given to the Lord Chancellor by the 13th section to grant a retiring allowance, not exceeding 100*l.* a-year, to one of the two Clerks of Reports, who has been employed for 25 years as a clerk or writer in the Report Office and 13 years as a writer in the Registrar's Office.

All the salaries given by the Act, and retiring allowances, are made payable out of the fund provided by the 48th section of the Act for the “Relief of the Suitors” (s. 14); and the 2nd section of the present Act also extends the provisions of the 15 & 16 Vict. c. 80, regarding salaries and annuities to the additional junior clerks now to be appointed.

#### 6th. *Ground and Buildings of the late Masters' Offices.*

The powers given by the Statutes 32 Geo. 3, c. 42, and 15 & 16 Vict. c. 80, s. 51, relating to the ground and buildings of the Masters' Offices in Southampton Buildings are extended,—enabling the Lord Chancellor to let, sell, or dispose of the Masters' Offices,—and vesting the whole of the ground acquired under the 32 Geo. 3, c. 42, in the Lord Chancellor for the time being, in trust for the uses of the Court of Chancery (s. 18); with power of leasing and sale (ss. 19, 20, 21). The rents and purchase-moneys to be paid into the Bank of England with the privy of the Accountant-General, for the benefit of the Suitors of the Court.

These rents or purchase-moneys should be applied towards the erection of new Courts and Offices in lieu of those about to be removed from the Palace at Westminster. We hope soon to see the commencement of a new “Palace of Justice” on the borders of the cities of London and Westminster—“situate, lying, and being,” between the two Temples and Lincoln's Inn, flanked by the several Inns of Chancery; and thus combining, with great advantage to the Public, in the centre of the Metropolis, the convenience of both branches of the Profession.

### THE “TIMES” SUMMARY OF LEGAL MEASURES.

“THE Session has produced two measures of the very highest importance, and destined to affect for good or for evil the future destinies of the empire.

The first is the Bill for the *Government of the Metropolis*, a bold and original attempt to supply a great practical want, and to give to two millions and a-half of people, closely packed together, that organisation of which, by some inexplicable oversight, they have hitherto been deprived. Whether we consider the amount of evil it proposes to destroy, the positive good it will produce, or the promise of at last doing something for future self-government under a less ridiculous form than that of obsolete civic dignities, the importance of such a step can hardly be overstated. We await with impatience the full complement of the measure in the reform of the city, which has most unfortunately, and not, we fear, without the prospect of great evil, been deferred till next year.

The other measure is, as our readers will anticipate, the Bill for *Limiting the Liability of Partners*, a measure conceived undoubtedly in a spirit far narrower than the principle on which alone it must be defended, but still fraught with enormous practical results, and destined to search out and to strengthen by the invigorating application of capital and competition all the weak places of our present commercial system.

Among minor measures, we view with satisfaction the Bill for *Preventing Fraudulent and Dilatory Defences to Bills of Exchange*, a measure good in itself, and founded on a principle capable of much wider application.

The *Criminal Justice Bill*, extending the summary jurisdiction of magistrates to cases of felony.

The repeal of the *Conventicle Act*, which may be styled a new charter of religious liberty.

A more questionable measure is the alteration of the *Newspaper Stamp Act*, a measure founded on exaggerated statements and expectations, which have not been, and could not be, realised, and the chief effect of which has

been to deprive the Government of a quarter of a million of money without producing that cheap press in which we were told that we were to find a full equivalent.

The catalogue of failures is long. The *Testamentary Bill*, a measure sound in principle, but not framed to conciliate support;—The *Church Rates* and the *Marriage Bills* talked to death;—the *Irish Tenants' Compensation Bill*, a sham of ostentatious dishonesty never meant to pass;—the *Scottish Education Bill*, sacrificed to that feeling of voluntarism which is rising in that part of the island;—the *Health Bill*, put off for want of time; the various projects of *Education*, which are rather manifestoes than projects of law, and even destined to destroy each other,—and the *Cambridge University Bill*, framed to continue the monopoly of the heads of colleges under the semblance of a free constitution, and never sufficiently purged of its original vices to be presentable to the House of Commons.

To the constitutional lawyer the Session will be remarkable for having decided the question as to the right of contractors for loans to sit in Parliament; a decision, perhaps, more consonant with common sense than the strict dictates of law. The antiquary of a century hence will also, perhaps, note in his *Hallam* that it was in this year that the two Houses ceased to communicate by a Master in Chancery or the Queen's ancient Serjeant, and substituted for those old gentlemen the simple expedient of a letter.

The last month of the Session witnessed a contest between the Legislature and the mob, in which the former were signally defeated. The withdrawal of the *Sunday Trading Bill* was denied to expostulation, but conceded at once to violence, and the victory was so far improved that the Bill for Limiting the hours during which *Public Houses* may be opened on *Sunday afternoon* was repealed in hot haste, without pausing to hear what might be said in its favour. This measure, though not in itself unjust, is full of evil augury, and tends to instil a dangerous confidence that what is denied to remonstrance will be at once conceded to violence. We do not regret the repeal of a Bill which caused so much inconvenience to innocent persons, but the manner of its repeal and the use that is likely to be made of it are greatly to be deprecated."

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages:—

*Purchasers' Protection*, 18 Vict. c. 15,—p. 5.  
*Lapacy Regulation Act*, c. 13,—p. 32.  
*Commons' Inclosure*, c. 14,—p. 32.  
*Newspaper Stamp Duties*, c. 27,—p. 137.  
*Sewers (House Drainage)*, c. 30,—p. 139.

*House of Commons' Proceedings*, c. 33,—p. 139.

*Income Tax*, c. 20,—p. 197.

*Stannary Courts' Jurisdiction*, c. 32,—pp. 214, 236.

*Administration of Oaths Abroad*, 18 & 19 Vict. c. 42,—p. 175.

*Ecclesiastical Courts (Defamation Suits Abolition)*, c. 41,—p. 176.

*Common Law Pleadings*, c. 26,—p. 176.

*Infants' Marriage Settlements*, c. 33,—p. 198.

*Palatine of Lancaster Trials*, c. 45,—p. 241.

*Bills of Exchange and Promissory Notes*, c. 67,—p. 256.

*Cinque Ports*, c. 48,—p. 258.

*Commons Inclosure (No. 2)*, c. 61,—p. 275.

*Incumbered Estates Acts (Ireland) Continuance*, c. 73,—p. 276.

*Places of Religious Worship Registration*, c. 81,—p. 276.

*Friendly Societies*, c. 63,—pp. 296, 319, 343.

*Limited Liability*, c. 133,—p. 316.

*Despatch of Business, Court of Chancery*, c. 134,—p. 338.

*Charitable Trusts*, 1855, c. 124,—p. 358.

*Crown Suits*, c. 90,—p. 376.

*Criminal Justice*, c. 126,—p. 377.

### CROWN SUITS.

18 & 19 VICT. c. 90.

In all Crown suits, &c., where the Crown is successful, costs to be recovered as between subject and subject; s. 1.

Defendant entitled to costs, if successful against the Crown; s. 2.

Power to Judges to make rules and orders for regulation of pleading and practice in Crown suits; s. 3.

The following are the Title and Sections of the Act:—

An Act for the Payment of Costs in Proceedings instituted on behalf of the Crown in Matters relating to the Revenue, and for the Amendment of the Procedure and Practice in Crown Suits in the Court of Exchequer.

[14th August, 1855.]

Whereas in divers proceedings instituted by or on behalf of the Crown against the Queen's subjects in respect of matters relating to the revenue no costs are recovered by the Crown, except in certain cases, and no costs are paid by the Crown to the subject: And whereas it is expedient to assimilate the law as to the recovery of costs in such proceedings by or on behalf of the Crown to that in force as to proceedings between subject and subject: Be it therefore enacted, as follows:—

1. In all informations, actions, suits, and legal proceedings to be hereafter instituted before any Court or tribunal whatever in the United Kingdom of Great Britain and Ireland, by or on behalf of the Crown, against any corporation, or person or persons, in respect of any lands, tenements, or hereditaments, or of

any goods or chattels, belonging or accruing to the Crown, the proceeds whereof, or the rents or profits of which said lands, tenements, or hereditaments, by any Act now in force or hereafter to be passed are to be carried to the Consolidated Fund of Great Britain and Ireland, or in respect of any sum or sums of money due and owing to her Majesty by virtue of any vote of Parliament for the service of the Crown, or of any Act of Parliament relating to the Public Revenue, her Majesty's Attorney-General, or in Scotland the Lord Advocate, shall be entitled to recover costs for and on behalf of her Majesty, where judgment shall be given for the Crown, in the same manner, and under the same rules, regulations, and provisions, as are or may be in force touching the payment or receipt of costs in proceedings between subject and subject, and such costs shall be paid into the Exchequer, and shall become part of the Consolidated Fund.

2. If in any such information, action, suit, or other proceeding, judgment shall be given against the Crown, the defendant or defendants shall be entitled to recover costs, in like manner, and subject to the same rules and provisions, as though such proceeding had been had between subject and subject; and it shall be lawful for the Commissioners of her Majesty's Treasury and they are hereby required to pay such costs out of any moneys which may be hereafter voted by Parliament for that purpose.

3. And whereas the procedure and practice in informations, suits, and other proceedings instituted by or on behalf of the Crown in her Majesty's Court of Exchequer is dilatory, and requires amendment, and it is desirable that the same should be assimilated as nearly as may be to the course of practice and procedure now in force in actions and suits between subject and subject: Be it enacted, That it shall be lawful for the Barons of her Majesty's Court of Exchequer in England, or any three of them, and also for the Barons of her Majesty's Court of Exchequer in Ireland, or any three of them, in their respective Courts, to make all such general rules and orders for the regulation of the pleading and practice in such informations, suits, and other proceedings, and to frame such writs and forms of proceedings, as to them may seem expedient for the purpose aforesaid; and all such rules, orders, or regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately upon the making of the same, or if Parliament be not sitting, then within five days after the next meeting thereof; and no such rule, order, or regulation shall have effect until three months after the same shall have been so laid before both Houses of Parliament; and any rule, order, or regulation so made shall, from and after such time aforesaid, be binding and obligatory on the said Court, and on all Courts of Error into which any judgment of the said Court shall be carried by any writ of error, and be of the like force and effect, as if the provisions contained therein had been expressly enacted by Parliament: Provided always, that it shall be lawful

for the Queen's most Excellent Majesty, by any proclamation inserted in the *London Gazette*, or for either of the Houses of Parliament, by any resolution passed at any time within three months next after such rules, orders, and regulations shall have been laid before Parliament, to suspend the whole or any part of such rules, orders, or regulations, and in such case the whole, or such part thereof as shall be so suspended, shall not be binding and obligatory on the said Courts, or any other Court of Common Law or Court of Error.

#### CRIMINAL JUSTICE.

18 & 19 VICT. c. 126.

Power to justices at petty sessions to punish persons charged with larceny, &c., summarily. If parties accused do not consent, justices to deal with cases as if this Act had not passed; s. 1.

Justices to ask the accused whether he consents to the charge being summarily determined; s. 2.

Persons charged with larceny, &c., may plead guilty before justices in petty sessions, and be sentenced forthwith. Justices to warn the accused that he is not obliged to plead; s. 3.

Persons accused may have assistance of counsel, &c.; s. 4.

Power to remand persons charged to next petty sessions; s. 5.

Forfeited recognizances to be transmitted to the clerk of the peace; s. 6.

Convictions and other proceedings to be returned to the quarter sessions; s. 7.

Justices may order restitution of property; s. 8.

Petty sessions to be an open Court, and held for petty sessional division; s. 10.

11 & 12 Vict. c. 43, not to apply to proceedings under this Act; s. 9.<sup>1</sup>

Effect of conviction; s. 11.

Proceedings under this Act a bar to further proceedings; s. 12.

No conviction to be quashed for want of form; s. 13.

Justices may order payment of expenses; s. 14.

Town hall, Court house, &c., of county, city, or borough may be used for petty sessions held under this Act; s. 15.

Any metropolitan police magistrate or stipendiary magistrate may act alone; s. 16.

Nothing to affect provisions of 10 & 11 Vict. c. 82, and 13 & 14 Vict. c. 37; s. 17.

As to compensation to clerks of peace and other officers; s. 18.

Power to increase salary of chief magistrate to a sum not exceeding 1,500*l.*; s. 19.

<sup>1</sup> Sic in Queen's Printers' copy.

Provisions of 15 & 16 Vict. c. 73, for payment by salary in lieu of fees to clerks of assize for their duties as associates extended to the whole office of clerk of assize, &c.; s. 20.

So much of 12 Ric. 2, c. 10, and 14 Ric. 2, c. 12, &c., as directs payment of wages to justices and their clerks repealed; s. 21.

In cases of injuries to property, parties aggrieved may receive compensation, though examined as witnesses; s. 22.

Interpretation of terms; s. 23.

Extent of Act; s. 24.

The following are the Title and Sections of the Act:—

An Act for diminishing Expense and Delay in the Administration of Criminal Justice in certain cases. [14th August, 1855.]

Be it enacted, as follows:—

1. Where any person is charged before any justices of the peace assembled at such petty sessions as hereinafter provided with having committed simple larceny, and the value of the whole of the property alleged to have been stolen does not, in the judgment of such justices, exceed 5s., or with having attempted to commit larceny from the person or simple larceny, it shall be lawful for such justices to hear and determine the charge in a summary way, and if the person charged shall confess the same, or if such justices, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then it shall be lawful for such justices to convict the person charged, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any period not exceeding three calendar months, and if they find the offence not proved they shall dismiss the charge, and make out and deliver to the person charged a certificate under their hands, stating the fact of such dismissal; and every such conviction and certificate respectively may be in the Forms (A.) and (B.) in the Schedule to this Act, or to the like effect: Provided always, that if the person charged do not consent to have the case heard and determined by such justices, or if it appear to such justices that the offence is one which, owing to a previous conviction of the person charged, is punishable by law with transportation or penal servitude, or if such justices be of opinion that the charge is, from any other circumstances, fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily, such justices shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this Act had not been passed: Provided also, that if upon the hearing of the charge such justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged, without proceeding to a conviction.

2. Where the justices before whom any person is charged as aforesaid propose to dispose of the case summarily under the foregoing provisions, one of such justices, after the examinations of all the witnesses for the prosecution have been completed, and before calling upon the person charged for any statement which he may wish to make, shall state to such person the substance of the charge against him, and shall then say to him these words, or words to the like effect:—"Do you consent that the charge against you shall be tried by us, or do you desire that it shall be sent for trial by a jury at the sessions or assizes" (as the case may be); and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then the justices shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty, the justices shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this Act in respect to such offence; but if the person charged shall say that he is not guilty, the justices shall then inquire of such person whether he has any defence to make to such charge, and if he shall state that he has a defence the justices shall hear such defence, and then proceed to dispose of the case summarily.

3. Where any person is charged before any justices at such petty sessions as aforesaid with simple larceny (the property alleged to have been stolen exceeding in value 5s.), or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution has been completed, is in the opinion of such justices sufficient to put the person charged on his trial for the offence with which he is charged, such justices, if the case appear to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this Act, shall reduce the charge into writing, and shall read it to the said person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty such justices shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of such offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding six calendar months; and every such conviction may be in the Form (C.) in the Schedule to this Act, or to the like effect: Provided always, that the said justices, before they ask such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before them at all, and that if he do not plead or answer before them he will be committed for trial in the usual course.

4. In every case of summary proceeding under this Act the person accused shall be allowed to make his full answer and defence,

and to have all witnesses examined and cross-examined by counsel or attorney.

5. Where any person is charged before any justice or justices with any offence mentioned in this Act, and in the opinion of such justice or justices the case may be proper to be disposed of by justices in petty sessions under this Act, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination to the next petty sessions, in like manner in all respects as a justice or justices are authorised to remand a party accused under the Act passed in the Session holden in the 11 & 12 Vict. c. 42, s. 21, or under the Petty Sessions Act (Ireland), 1851, sect. 14.

6. If any person suffered to go at large upon entering into such recognizance as the justice or justices are authorised under the last-mentioned Act to take on the remand of a party accused do not afterwards appear pursuant to such recognizance, then the justices before whom he ought to have appeared shall certify (under the hands of two of them) on the back of the recognizance, to the clerk of the peace of the county or place, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance.

7. The justices adjudicating under this Act shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of the witnesses for the prosecution and for the defence, and the statement of the accused, to the next Court of General or Quarter Sessions for the county or place, there to be kept by the proper officer among the Records of the Court; and a copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein in any legal proceeding whatever.

8. It shall be lawful for the justices by whom any person is convicted under this Act to order restitution of the property stolen, taken, or obtained by false pretences, in those cases in which the Court, before whom the person convicted would have been tried but for this Act, may be by law authorised to order restitution.

10. Every petty sessions for the purposes of this Act shall be an open public Court, and shall be the petty sessions holden for a petty sessional division; and a written or printed notice of the days and hours for holding such petty sessions shall be posted or affixed by the clerk to the justices of petty sessions upon the outside of some conspicuous part of the building or place where the same are held.

9. The provisions of the Act of the Session holden in the 11 & 12 Vict. c. 43, shall not be construed as applying to any proceeding under this Act.

11. Every conviction by justices in petty

sessions under this Act shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this Act shall be attended with any forfeiture.

12. Every person who obtains a certificate of dismissal or is convicted under this Act shall be released from all further or other criminal proceedings for the same cause.

13. No conviction, sentence, or proceeding under this Act shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

14. Where any charge is summarily adjudicated upon under this Act, or an offender is under this Act convicted by justices in petty sessions upon a plea of "Guilty," it shall be lawful for the justices by whom such charge has been adjudicated upon or offender convicted, upon the request of any person who has preferred the charge or appeared to prosecute or give evidence against the person charged, if such justices think fit so to do, to grant a certificate to such person of the amount of the compensation which such justices may deem reasonable for his expenses, trouble, and loss of time therein, subject nevertheless to the regulations made or to be made as hereinafter mentioned; and every such certificate shall, when granted in England, have the effect of an order of Court for the payment of the expenses of a prosecution made under the 7 Geo. 4, c. 64, and the Acts amending the same, and when granted in Ireland shall have the effect of an order of Court for the payment of the expenses of a prosecution made under the Act of the 55 Geo. 3, c. 91, and the Acts amending the same; and the amount mentioned in such certificate shall be paid in like manner as the money mentioned in such order of Court; and all certificates to be granted under this Act shall be subject to the like regulations made or to be made in relation thereto as the certificates mentioned in the said Act of the 7 Geo. 4, to be granted by examining magistrates, are or may be subject to under the Act of the Session holden in the 14 & 15 Vict. c. 55: Provided also, that the amount of the fees payable to the clerks of the magistrates in petty sessions, in respect of any proceeding under this Act, and of the fees payable to the clerks of the peace for filing the depositions, conviction, or certificate of dismissal aforesaid, and of all such expenses of apprehending the person charged, and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial, may be added to the certificate for compensation aforesaid, and paid in the like manner.

15. In every city, borough, town, or place in England where any petty sessions shall be holden under this Act, the town hall, court house, or other public building therein belonging to any county, city, borough, town, or place, or any court house in such city, borough,



town, or place provided by the Commissioners of her Majesty's Treasury, under the Act of the Session holden in the 9 & 10 Vict. c. 95, may be used for the purpose of holding such petty sessions, without any charge for rent or other payment, save and except the reasonable and necessary charges for lighting, warming, and cleaning, when such public building is used for the purpose of holding such Courts of Petty Sessions, and for all other expenses necessarily incidental to the use of the said building for the purposes of the said Courts: Provided always, that the necessary arrangements shall be made so that the sittings of the said Courts of Petty Sessions shall not interfere with the business of the county, city, borough, town, or place or other business usually transacted in such town hall, court house, or other public building, or any purpose for which any such town hall, court house, or other public building may be used by virtue of any Act of Parliament in that behalf.

16. Any one of the magistrates appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, or any magistrate appointed to act at the police courts of the Dublin metropolitan district, and sitting at a police court within the said district, or any stipendiary magistrate appointed for any city, town, liberty, borough, or district, and sitting at a police court or other place appointed in that behalf, may, in the case of persons charged before such magistrate, do alone all acts by this Act authorised to be done by justices of the peace in petty sessions, and all the provisions of this Act referring to justices in petty sessions shall be read and construed as referring also to such magistrate.

17. Nothing in this Act shall affect the provisions of the Act of the Session holden in the 10 & 11 Vict. c. 82, "For the more speedy Trial and Punishment of Juvenile Offenders," or of the Act of the Session holden in the 13 & 14 Vict. c. 37, "For the further Extension of Summary Jurisdiction in Cases of Larceny," or of the Summary Jurisdiction (Ireland) Act, 1851; and this Act shall not extend to persons punishable under the said Acts, so far as regards offences for which such persons may be punished thereunder.

18. And whereas the fees and emoluments of clerks of the peace for counties and boroughs, and of other officers of the Courts of Quarter Sessions, in criminal proceedings, may be seriously diminished by the operation and effect of this Act, and it is just and reasonable that full compensation for any such loss should be made in respect thereof to such clerks of the peace and other officers appointed before the passing of this Act: Be it therefore enacted, that immediately after the passing of this Act the Commissioners of her Majesty's Treasury shall, upon the application of any such clerk of the Peace or other officer, by such means and in such manner as they think proper, inquire into and ascertain the annual amount, to be computed upon an average of five years

immediately preceding the passing of this Act, or of such shorter period as such clerk of the peace or other officer shall have been in office, of the fees and emoluments in criminal prosecutions received by such clerk of the peace or other officer; and the said Commissioners shall, upon the like application, also ascertain, in such manner as they may think proper, the total amount of fees and emoluments in criminal prosecutions received by such clerk of the peace or their officer during any year after the passing of this Act; and the said Commissioners are hereby authorised and empowered, by warrant under their hands, to award to such clerk of the peace or other officer the deficiency, when and so often as the same shall occur, between the last-mentioned amount and the annual average amount so ascertained as aforesaid, and the sum so awarded shall be paid out of any moneys which may be provided by Parliament for that purpose; provided, that in all cases where any such clerk of the peace, by reason of his being paid by salary, under an order made by virtue of the Act of the Session holden in the 14 & 15 Vict. c. 55, shall pay such fees and emoluments as aforesaid to the treasurer of the county or borough for which he is clerk of the peace in aid of the county or borough rate, as the case may be, such deficiency, when so ascertained as aforesaid, shall be paid to the treasurer of such county or borough respectively.

19. And whereas by section 9 of the Act of the Session holden in the 2 & 3 Vict. c. 71, provision is made for payment out of the moneys in the hands of the receiver of the metropolitan police district of such salaries as her Majesty shall direct to the magistrates of the police courts of the metropolis, the salary to the chief magistrate not being more than 1,200*l.*, and to each of the other magistrates not more than 1,200*l.*: And whereas after the passing of the said Act the salary of the chief magistrate was fixed at 1,200*l.*, and the salaries of the other police magistrates at 1,000*l.*: And whereas the duties of the said chief and other magistrates have increased, and are subject under this Act to be further increased: And whereas the salaries of such other magistrates have, in consequence of such increase of duty, been increased from 1,000*l.* to the limit permitted by the said Act, and it is expedient to authorise such increase of the salary of the said chief magistrate as hereinafter mentioned: The salary to be paid out of the moneys aforesaid to the said chief magistrate shall be such yearly sum, not exceeding 1,500*l.* as her Majesty may direct.

20. And whereas by the Act of the Session holden in the 15 & 16 Vict. c. 73, certain powers were granted and provisions made for the payment to the several clerks of assize of annual sums for salaries, and for the expenses of their office, in respect of their duties as associates, in lieu of the fees and emoluments appertaining to those duties: And whereas it is expedient that the principle of payment by salary in lieu of fees should be further provided

for, and that the clerks of assize should be so paid for the performance of all their other duties: Be it therefore enacted, That all fees and emoluments heretofore payable to the clerks of assize for the performance of their duties as clerks of the Crown shall be and they are hereby abolished; and all the powers and provisions made by the before-mentioned Act, except as is hereinafter provided, for the payment of clerks of assize by salary in lieu of fees, in respect of their duties as associates, shall be and the same are hereby extended and made applicable to the payment of clerks of assize by salary, and the expenses of their offices, in lieu of fees and emoluments, for the performance of their duties as clerks of the Crown and of all other duties appertaining to the office of clerk of assize: Provided always, that the Commissioners of her Majesty's Treasury for the time being shall fix and determine the amount of salary to be allowed to any subordinate officer now employed or who shall hereafter be employed by any clerk of assize, and shall be empowered to order the payment of such salary to the said officers in the first instance, and not through the medium of the clerk of assize: Provided also, that the salaries and expenses of the officers of the said clerks of assize for the whole of their duties on the criminal and civil sides of the Court shall be paid out of any moneys which may be provided by Parliament for that purpose.

21. And whereas by Acts of the 12 and 14 Rich. 2, payments are provided for justices of the peace and their clerks in each county, as wages by the day for the time of their sessions, to be payable by the sheriff, as therein mentioned, and in several counties in England sums are claimed from the sheriffs and paid in respect of such statutory wages, and it is expedient that such payments should be discontinued: Be it therefore enacted, That so much of the several Acts of the 12 Rich. 2, c. 10, and of the 14 Rich. 2, c. 12, or of any other Act now in force as directs or authorises the payment of wages to justices of the peace and their clerks for the time of their sessions, shall be repealed.

22. And whereas it is expedient to amend the law as to witnesses in cases of wilful or malicious injuries to property: Be it further enacted, That in all cases where any justice or justices of the peace have or shall hereafter have power to order a sum of money to be forfeited and paid to the party aggrieved, as amends or compensation for any injury to property, real or personal, the right of such party to receive the money so ordered to be paid shall not be affected by such party having been examined as a witness in proof of the offence, any Law or Statute to the contrary notwithstanding.

23. In the interpretation of this Act "county" shall be construed to include riding, parts, liberty, and division of a county; "borough" to include city, county of a city or town, and town corporate; "property" to include everything included under the words "chattel,

money, or valuable security," as used in the Act of the Session holden in the 7 & 8 Geo. 4, c. 29; and in the case of any "valuable security" the value of the share, interest, or deposit to which the security may relate, or of the money due thereon or secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security.

24. This Act shall not extend to Scotland.

#### SCHEDULE.

##### FORM (A.)

##### Conviction.

{ Be it remembered, That on the  
to wit, } day of \_\_\_\_\_ in the year of our  
Lord \_\_\_\_\_, at \_\_\_\_\_ in the said [county],  
A. B., being charged before us the undersigned  
of her Majesty's Justices of the Peace  
for the said [county], and consenting to our  
deciding upon the charge summarily, is con-  
victed before us, for that [he the said A. B.,  
&c., stating the offence, and the time and place  
when and where committed]; and we adjudge  
the said A. B. for his said offence to be im-  
prisoned in the [house of correction] at  
in the said [county], [and there kept to hard  
labour] for the space of \_\_\_\_\_

Given under our Hands and Seals, the day  
and year first above-mentioned, at  
in the [county] aforesaid.

J. S. (L.S.)  
H. M. (L.S.)

##### FORM (B.)

##### Certificate of Dismissal.

{ We \_\_\_\_\_ of her Majesty's Justices  
to wit, } of the Peace for the [county] of \_\_\_\_\_  
certify, That on the \_\_\_\_\_ day of \_\_\_\_\_ in  
the year of our Lord \_\_\_\_\_ at \_\_\_\_\_ in the  
said [county] A. B. being charged before  
us, and consenting to our deciding upon the  
charge summarily, for that [he the said A. B.,  
stating the offence charged, and the time and  
place when and where alleged to be committed,]  
we did, having summarily adjudicated thereon,  
dismiss the said charge.

Given under our Hands and Seals this  
day of \_\_\_\_\_ at \_\_\_\_\_ in the [county]  
aforesaid.

J. S. (L.S.)  
H. M. (L.S.)

##### FORM (C.)

##### Conviction upon a Plea of Guilty.

{ Be it remembered, That on the  
to wit, } day of \_\_\_\_\_ in the year of our  
Lord \_\_\_\_\_ at \_\_\_\_\_ in the said [county],  
A. B., being charged before us, the under-  
signed \_\_\_\_\_ of her Majesty's Justices of the  
Peace for the said [county], for that [he the  
said A. B., &c., stating the offence, and the time  
and place when and where committed], and  
pleading guilty to such charge, he is thereupon  
convicted before us of the said offence; and we

and several, the creditor need not even sue the principal debtor before proceeding against the surety. As the object of a creditor in requiring a surety is generally, to obtain payment of the debt when it becomes payable without the necessity of having recourse to legal proceedings, we think that the surety should not be indulged with the benefit of discussion, and that in this respect the law of Scotland should be assimilated to the Laws of England and Ireland.

*Privilege of Surety.—Assignment of Creditor's Securities.*

In Scotland a surety has likewise the privilege, on his performing the obligation, of demanding from the creditor an assignation of the creditor's claim, not only on the principal debtor, but also on co-cautioners, and of all securities held by the creditor from or against the principal debtor, unless such assignation would operate to the detriment of the creditor. In virtue of such assignation the surety, in order to operate reimbursement of his advances, may exercise all the rights of the original creditor,—excepting that in claiming against his co-sureties he must deduct the amount of his own rateable share of the debt. In England and Ireland the surety cannot have the benefit of such bonds or judgments or other securities as are held to be extinguished by the performance by the surety of the principal obligation; and is entitled only to an assignment of any bond or security by the principal debtor other than that which is so extinguished. The equity and the propriety of the Scottish rule are obvious, inasmuch as the surety obtains much aid in operating his relief from the hardship of having been compelled to pay another party's debt; and yet no detriment is thereby inflicted on any other party. The theory on which in England and Ireland a surety is prevented from obtaining a similar privilege is a subtlety which ought not to prevent the adoption of the Scottish equitable rule into the laws of those countries, and we recommend that such adoption should take place.

*Discharge of Surety.*

In England and Ireland an unqualified discharge by the creditor of one of several sureties operates as a discharge of all of them. In Scotland such a discharge of one would operate as a discharge of the co-sureties only to the extent to which the one, in whose favour the discharge is granted, is bound to contribute to the relief of the others. The Scottish rule appears to proceed on an assumption that the co-sureties suffer no detriment from such a discharge beyond the loss of a claim on the discharged surety for a contribution of his rateable share of the debt. But a majority of us think that there is a fallacy in such assumption, because the co-sureties lose also the benefit of the discharged surety's assistance and co-operation (on which they may have mainly relied on undertaking the engagement) in endeavouring to make the principal debtor himself perform his obligation; and that as it is

impossible to estimate the extent of this loss, it is a salutary rule, that when a creditor so interferes with the interests of the sureties, they should be entirely discharged; and we recommend that this should be the rule in Scotland as well as in England and Ireland. But we make this recommendation only on the clear ground of equity above stated, and do not suggest the introduction into the Law of Scotland of a theory on which the practical rule is founded in the laws of the other countries, as to the effect of the entire extinction of a joint obligation by the discharge of any of the obligants.

*Evidence of Discharge of Guarantee.*

According to the Laws of England and Ireland the discharge of a written guarantee may be proved without writing. In Scotland such a discharge is proveable only by the writing of the creditor, or by his unqualified admission on "oath of reference." In regard to guarantees in mercantile transactions (and we give no opinion as to other kinds of transactions), we do not see why such a discharge should be ineffectual, although it be not embodied in writing, if it can be satisfactorily proved by oral evidence. We therefore think that this should be the rule in all parts of the United Kingdom.

IV. BILLS AND NOTES.

Between the Laws of England and Ireland and of Scotland affecting negotiable securities, we have found considerable differences to exist; and we are of opinion that those laws in many particulars may be assimilated with advantage.

*Parties.*

The laws differ as to the capacity of minors and married women to bind themselves by such instruments. Our opinion on this subject is embodied in our observations under the head of DEBTOR AND CREDITOR.

*Form.—Absence of Date.*

With regard to the form of bills or notes: in Scotland, if they are issued without date, that omission can only be supplied by written evidence; whereas in England and Ireland, as in the case of deeds without date, which are treated as made when delivered, they are deemed to be dated on the day when they are issued, and of which oral evidence may be given. We believe the issue of bills and notes without date to occur very rarely, and then by the negligence of the maker; and if any inconvenience arises from permitting the time when such an instrument was issued to be proved, by oral evidence, it seems reasonable that the careless maker should suffer it; and we recommend that in future the English and Irish rule on this subject should be adopted in Scotland; but inasmuch as the instrument to found summary diligence should be perfect on the face of it, we do not propose any alteration with regard to that remedy.

*Form.—Negotiability.*

There is another difference prevailing as to the form of a bill or note, which we think it

necessary to notice. In England and Ireland a bill or note is not negotiable unless made payable to order or to bearer. In Scotland it is. On the one hand, it may be said, that the intention of parties is to be collected from their words, and if a bill or note is not in terms made payable to order or to bearer, it cannot be presumed that the parties intended it to be so. On the other hand, it has been observed, that bills and notes are essentially negotiable instruments, and that it must be presumed that the parties intended them to be so, unless the contrary be expressed; and we think this the more convenient rule, and that in future, throughout the United Kingdom, bills and notes should be negotiable, unless the negotiation of them is expressly on the face of them restricted.

#### *Acceptance.*

With regard to the acceptance of bills. In England and Ireland, before the passing of the Statute 1 & 2 Geo. 4, c. 78, an acceptance by word only or by detached writing was held sufficient, at all events in favour of a party to whom such acceptance was communicated, and who took the bill on the faith of it. From time to time eminent Judges expressed their opinion "that it would have been better doctrine if it had been originally determined that nothing else should amount to an acceptance than a written acceptance on the bill itself." At length, in the 1 & 2 Geo. 4, an Act was passed whereby (c. 78, s. 2) it was enacted, for the whole United Kingdom, "that from and after the 1st day of August, 1821, no acceptance of any inland bill of exchange shall be sufficient to charge any person, unless such acceptance be in writing on such bill, or if there be more than one part of such bill on one of the said parts." But in England and Ireland the law still remains the same with regard to foreign bills, the acceptance of which may be verbal or by detached writing. In Scotland proof of a verbal promise to accept is inadmissible as to both foreign and inland bills; but a written promise on separate paper to accept a foreign bill still amounts to an acceptance, so as to ground an ordinary action, and complete the bill as an assignment, but not so as that summary diligence may be used. The extent of the mercantile transactions, which now take place between traders in the different parts of the United Kingdom renders it expedient that the same law should prevail in all parts of it; nor do we find sufficient reasons for adopting a different rule as to the acceptance of inland and foreign bills; and we recommend that the law on this subject shall be assimilated throughout the United Kingdom, and that no acceptance of a bill of exchange, whether inland or foreign, shall be sufficient to charge any person, unless such acceptance be in writing on such bill, and signed by the acceptor or some person duly authorised by him.

We also recommend that all bills drawn in one part of the United Kingdom (in which we would include the Isle of Man and the Channel Islands) upon a party in any other part shall be deemed inland bills.

#### *Effect.*

In Scotland a bill of exchange operates from the time of presentment for acceptance as an assignment of debt owing by the drawee to the drawer; but in England and Ireland, although bills of exchange and promissory notes are excepted out of the general rule that choses in action cannot be assigned, yet a bill has not the effect of assigning a debt, or money of the drawer in the hands of the drawee. We believe that the Scotch Law on this subject is productive of benefit; and as debts may be assigned in equity, we see no sufficient reason for refusing to give the same operation to bills of exchange in England and Ireland in this respect that they have in Scotland, and recommend that the laws of the several countries shall on this point be assimilated.

#### *Protest.*

When bills of exchange, whether inland or foreign, are presented for acceptance or payment, and dishonoured, it is necessary, in Scotland, that there should be a notarial protest, not only to found summary diligence, but to preserve recourse against drawer and indorsers, and no other evidence of dishonour is sufficient. In England and Ireland a notarial protest is required in the case of foreign bills only, and presentment and dishonour of an inland bill or note may be proved by any competent evidence in the same manner as any other disputed fact. With regard to foreign bills, the law is the same throughout the United Kingdom, and we see no reason for altering it; but as regards inland bills a notarial protest for the mere purpose of preserving recourse seems to occasion an unnecessary expense; and as in England and Ireland the fact of presentment is constantly proved by other evidence, we recommend that for this purpose the Scotch Law shall be assimilated to the English and Irish; but we must not be understood to recommend that any alteration shall be made in the proceeding by way of summary diligence in Scotland.

#### *Notice of Dishonour.*

In England and Ireland, when a bill, either foreign or inland, or promissory note, has been dishonoured, it is necessary to give notice of dishonour within a reasonable time, which in ordinary cases is held to be the next post after the day of dishonour. In Scotland the rule is the same as to foreign bills; but with regard to inland bills and notes, it suffices if notice is given within 14 days. This time is allowed by the express words of the 12 Geo. 3, c. 72, s. 41. It is by some supposed that this clause was introduced from a misunderstanding as to the effect of the English Statute 3 & 4 Ann., c. 9, s. 5. By that Act, s. 4, it was provided that inland bills might be protested, as in the case of foreign bills; and then s. 5 enacted that if such bills were not accepted in writing no drawer should be liable to pay any costs, damages, or interest thereupon, unless a protest were made for such non-acceptance, and within 14 days after such protest notice there-

of given to the party from whom such bill was received; and there was a similar provision for protest for nonpayment and notice thereof. It is supposed that the framers of the 12 Geo. 3. c. 72, s. 41, imagined that this Statute of Anne had allowed 14 days for giving notice of dishonour to preserve recourse, and therefore adopted that rule for Scotland. It cannot be doubted that assimilation on this point is desirable; and we recommend that the English and Irish rule as to inland bills and notes shall be adopted in Scotland, where the same rule already exists with regard to foreign bills.

#### *Remedy.*

With regard to enforcing payment of bills of exchange and notes, the Law of Scotland affords greater facilities than that of England and Ireland. In the latter portions of the United Kingdom payment can be enforced by action only; a course which has often been considered to impose unnecessary expense and delay on the holder, for needy debtors and their advisers are fertile in expedients to postpone the day of payment. Before the 6 Geo. 4. c. 96 [England], it was very common for defendants to suffer judgment by default, and then sue out a writ of error, which could not be disposed of for a considerable time. To remedy that evil in England the 6 Geo. 4. c. 96, was passed, requiring bail in error in all such cases. Defendants then pleaded to the action, and so compelled the plaintiff to go to trial, and after obtaining a verdict, if the trial took place in Vacation, he could not thereupon have judgment and execution until the following Term, which at some periods of the year occasioned a delay of several months. For this a remedy was given by the 1 & 2 W. 4. c. 7, s. 2, which enabled the Judge before whom a cause is tried to give the plaintiff, after obtaining a verdict, immediate execution. Additional facilities for obtaining final judgment, where a defendant does not appear, were given by the 15 & 16 Vict. c. 76, ss. 25 and 27. Similar enactments have been made for Ireland. But still a defendant may, on being served with a writ, appear and plead, and compel a plaintiff to go to trial before a jury, although he has no defence whatever to the action. In Scotland the proceeding known by the title of "summary diligence" was granted as to foreign bills by Statute 1681, c. 20, and as to inland bills by Statute 1696, c. 36, and was still further extended by 12 Geo. 3, c. 72. This remedy of "summary diligence" is competent only on such bills and notes as are formal in all respects. It proceeds on an extract (or office copy) of the registered protest on the bill or note, which is a warrant for execution. The protest may be registered in the books, either of the Court of Session, or of the Sheriff Court, to whose jurisdiction the debtor is subject. The issuing of the warrant and the execution take place without any previous suit; the means of preventing abuse being first, that a charge or requisition of payment must be given to the debtor six free days before the warrant of execution can

be put in force; and secondly, that during that period, or at any time before the execution is completed, a Judge (being one of the Lords of Session) who officiates in a Court called the Bill Chamber, and is accessible every lawful day throughout the year, may, if he see fit in the exercise of a sound discretion, stay the execution until the merits of any objection or defence which may be stated by the debtor shall be decided by the Court of Session; and such interim stay of diligence, if it be ordered, may also in the discretion of the Judge be allowed either unconditionally or only on condition of the debtor's finding security for the debt, or consigning the amount in bank. From the several extensions of the proceeding by summary diligence before mentioned we may conclude that during the intervening period it was found to work well; and the information that has been given to us tends to confirm that conclusion. We therefore recommend that in this respect the law of the several parts of the United Kingdom should be assimilated by establishing in England and Ireland some proceeding, similar to the Scotch summary diligence, to enforce payment of bills of exchange and promissory notes, which will protect the holder of a dishonoured bill from the expense and delay of a trial, when the debtor has no answer whatever to the claim.

We have seen two Bills, one entitled "An Act to permit the Registration of dishonoured Bills of Exchange and Promissory Notes in England, and to allow Execution thereon;" the other entitled "A Bill to facilitate the Remedies on Bills of Exchange and Promissory Notes by the Prevention of frivolous or fictitious Defences to Actions thereon," which appear to have been introduced for the purpose of supplying a remedy for the evil above pointed out. We understand that both are at present under the consideration of the Legislature, and therefore advisedly abstain from offering any opinion as to their comparative merits.

#### *Consideration.*

In all parts of the United Kingdom bills and notes import consideration; and in Scotland the presumption that there was consideration cannot be rebutted otherwise than by writing, or the oath of the holder, which the party sued is entitled to call for, provided he consents to be conclusively bound by the answer; a proceeding technically called "oath on reference." In England and Ireland the absence of consideration may be proved by any legal evidence, in the same manner as other disputed facts; and this rule we think should be adopted in Scotland.

Again, in England and Ireland proof that a bill or note had been lost, stolen, or fraudulently obtained, rebuts the original presumption of consideration, and casts upon the holder the burthen of showing that he gave consideration for it. In Scotland it is otherwise, and the party sought to be charged must show that the holder gave no consideration; but as that is a fact not within his knowledge, but within that of the holder, we think it much more reason-

able that the latter should be called upon to prove the affirmative.

#### *Indorsement when overdue.*

The holder of a bill or note who has *bona fide* given value for it has, in general, a good title, although it may have been found, stolen, or obtained from a prior party by fraud. But a party taking a bill or note over due, in England or Ireland, takes it subject to all equities and objections to which it was subject in the hands of the indorser, as far as they are intrinsic to the bill, but not subject to any collateral matter, such as a right of set-off against the former holder. In Scotland, the indorsee of an over due bill is not subject to latent objections attaching to it, if there be no marks of dishonour on the bill, and nothing suspicious in the transaction. But it seems to us that the English and Irish rule is preferable; that the fact of the bill being over due must be noticed by every person exercising reasonable care, and that the nonpayment of the bill at maturity ought to be considered sufficient to put the party on his guard as to taking it.

#### *Evidence of Discharge before payment.*

The last difference which we propose to notice between the laws of the different parts of the United Kingdom with regard to bills and notes relates to the manner in which it may be established that the holder has discharged a prior party from his liability. In Scotland such discharge can only be proved by writing or oath on reference of the party suing. In England and Ireland such discharge may be proved by any competent evidence. It does not appear that there is any difference in the laws of the two countries as to the power of discharging a party orally, but only as to the medium of proof; and on this, as we have already stated under the head of **DEBTOR AND CREDITOR**, we have come to the conclusion that the fact of discharge should be deemed capable of being proved by any legitimate evidence.

[To be continued.]

### STATUTE LAW COMMISSION.

#### EXTRACTS FROM THE MINUTES OF PROCEEDINGS OF THE COMMISSIONERS.

[Concluded from p. 304.]

March 14, 1855.

The following papers were laid before the Board:—

1. The draft of a Bill to consolidate and amend the Copyhold Commissioners' Acts, with a separate repealing Bill, prepared by Mr. Wingrove Cooke, under the direction of the Copyhold Commissioners, and at their request submitted to this Board.
2. A preliminary Report on the Consolidation of the Stamp Laws, by Mr. Henry Jessel.
3. A preliminary Report on the Consolida-

tion of the Statutes relating to Bills of Exchange and Promissory Notes, by Mr. J. Warrington Rogers.

The Attorney-General brought forward some objections to the mode of proceeding adopted by the Board. He contended that the plan of taking at random isolated groups of Statutes and consolidating them into single Acts was not likely to produce valuable results, or to satisfy the expectations which the public had formed from the appointment of the Commission.

Before the process of consolidation is commenced, the whole body of the law ought to be reviewed and arranged analytically; the parts of it which consist of Statutes should next be placed under their proper heads; and the process of consolidation should then be applied to those parts of the Statute Law which fall together under this arrangement. The whole operation would thus be performed with regularity and system, and should be laid before Parliament, not in detached portions, but as a complete work. He thought that if it was shown that it was a mere consolidation, and that it was carefully executed on fixed principles, the bulk of the work would not be an obstacle to passing the whole through Parliament at once.

The Solicitor-General was also in favour of commencing with an analytical arrangement of the law; but he further contended that the process to be applied to the Statute Law ought not to be a re-writing of the old Statutes in a condensed form, but a digest of the existing statutory provisions, without alteration of language, but with explanatory additions where they have been judicially interpreted. A digest of this kind would admit of the incorporation of the Common Law wherever advisable, which could not be effected by merely producing aggregations of old Statutes in new language. He contended that this was the process directed by the Royal Commission, taken in connexion with the Report of the Commissioners of 1835, whose suggestions were made binding on the present Board by the reference to them contained in the recitals prefixed to the Commission.

Sir W. P. Wood also thought that it would be useful to have a general analytical arrangement of the subject to be dealt with, as otherwise difficulties would arise in deciding the exact parts of the existing Statute Law that ought to be taken into any isolated consolidation.

The Lord Chancellor explained that by the mention of the Common Law in the Commission he conceived nothing more was intended than that draftsmen should not be deterred by any rigid rule from introducing such portions of Common Law as should make a consolidated Act a complete and intelligible enactment instead of a collection of fragments; and with regard to the proposal of the Attorney-General, he observed that after the proposed analysis of the Statute Law was made, it would still be necessary to begin the actual work of consoli-

dation with some isolated group; and he thought there would be great practical difficulty in passing an entire consolidation of the Statute Law through Parliament at once. He admitted that some imperfections might result from attempting to consolidate in partial groups, which might be avoided by a preliminary classification of the whole subject; but difficulties of detail would occur under any system, and the most scientific arrangement was not always found the most practically convenient. On the whole, his lordship thought it advisable to commence by attempting what we know to be practicable; well-drawn consolidated Acts were admitted to be useful, and were generally regarded with favour;—and if the Board could produce some good Bills of the same nature as “Peel’s Acts” and other existing specimens of consolidation, he thought it would gain the confidence of the public, and perhaps be empowered hereafter to attempt something on a larger and more scientific scale.

After considerable discussion, in which Lord Lyndhurst, Lord Brougham and others took part, it was finally arranged that an analytical arrangement of the contents of the Statute Book, as a guide to the Board in the choice of subjects for consolidation, should be prepared; but that meanwhile the consolidation of separate groups of Statutes should be continued according to the plan already adopted by the Board.

The Attorney-General, the Solicitor-General, Mr. Coulson, and Mr. Ker, were named the sub-committee to superintend the preparation of an analysis of the Statute Laws, and it was agreed that Mr. Anstey should be employed in the work under their direction.

The Lord Advocate made some observations on the operation of the Commission with reference to the Statute Law of Scotland. He observed that there was no great necessity for consolidation of the Scotch Statutes; but what was principally required was a revision of the English Statutes from which Scotland was excepted, with a view to the assimilation of the law of the two countries wherever practicable. This was a process which must be performed sooner or later, and the only question therefore was, whether it should precede the consolidation of the English law, so that the new consolidated Acts might be made applicable to all Great Britain, or be postponed till afterwards.

May 9, 1855.

The following papers were laid before the Board:—

A Report from Mr. Wingrove Cooke on the Consolidation of the Acts regulating Leases by Ecclesiastical Corporations.—Mr. Cooke having prepared this without an express authority from the Board, his employment on the subject was now approved and confirmed.

A Bill, by Mr. Warrington Rogers, for consolidating the law of Bills of Exchange and

Promissory Notes, as proposed by him in his Preliminary Report.

Mr. Ker reported that Mr. Walpole and himself had considered Mr. Jessel’s Preliminary Report on the Consolidation of the Stamp Laws, and had approved thereof, with certain modifications, and that they proposed to authorise Mr. Jessel to prepare a Bill on the subject; also, that he had revised Mr. Cooke’s Consolidation of the Copyhold Commissioners’ Acts, and had approved thereof, so far as it was a consolidation of the former Acts, but that he did not think it necessary for this Board to give any opinion as to the alterations of the law which were introduced in it, as those were questions for the consideration of the Copyhold Commissioners, and of the Lord Chancellor, who, it was understood, was to bring the Bill into Parliament.

May 23, 1855.

Mr. Wingrove Cooke’s scheme for a consolidation of the Statutes relating to Ecclesiastical Leases was referred to the Committee on the Laws of Real Property.

The Attorney-General produced the first part of an Analytical Arrangement of the whole Statute Law, prepared by Mr. Anstey under his direction.

After the Attorney-General had explained the division of the subject proposed by Mr. Anstey, a general discussion arose as to the course of proceeding to be adopted by the Board.

The Attorney-General urged the importance of laying down a complete and logical plan of the whole field to be operated upon before the work of consolidation was commenced. He contended that it was necessary for the satisfactory consolidation of any branch of the Statute Law that it should be executed with immediate reference to a methodical distribution of the whole contents of the Statute Book, and that if any isolated consolidations of particular subjects were commenced without any general plan, they must all be imperfect and unsatisfactory. He therefore proposed that the analytical arrangement of the Statutes should be first completed, and then a large body of draftsmen should be employed to recompose at once the body of law thus distributed into a complete and methodical digest. He thought that Parliament would be more ready to pass a work of this kind in its entirety than to take up Bills which should only profess to consolidate particular subjects.

The Solicitor-General remarked on the importance of making every division of the digest proposed by the Attorney-General complete in itself, so as to present a statement of the entire law on the subject comprised in it.

The Lord Chancellor observed that that would be to codify the whole law, a work which was not within the scope of the present Commission. With respect to the remarks of the Attorney-General, his lordship observed that no arrangement of the contents of the Statute Book, however logical, would present

any complete body of law, as the Statute Law itself was only a collection of alterations of, or additions to, the unwritten law; and he therefore suggested that the Attorney-General's proposal, however just it might be if a codification of the whole law of the land were the object in view, was misapplied with reference to the Statute Law alone. But his lordship agreed that it would be advantageous to have some preliminary arrangement of the whole contents of the Statute Book, in order to settle what groups should be taken together for the purpose of consolidation, according to some uniform principle of classification, so far as any principle could be applied; though, owing to the fragmentary nature of the subject, there must be many cases in which the distribution could be little better than arbitrary.

With regard to the disposition of Parliament, his lordship thought that it would be easier to begin by passing a few consolidated Acts on subjects which are generally admitted to require consolidation, and on which there are no differences of opinion which would raise discussion, than to attempt to pass an entire digest at once, as proposed by the Attorney-General; the confidence of Parliament would thus be obtained, and measures of a more extensive character, if hereafter determined on, would be better received and more easily passed.

Mr. Coulson pointed out a further advantage which would arise from having an exhaustive examination of the whole Statute Book in the first instance, namely, that it would ensure the detection of many scattered enactments which would otherwise be overlooked.

At the conclusion of the discussion, it was agreed that Mr. Anstey's Analysis should be printed for the use of the Board, and the Attorney-General was requested to empower Mr. Anstey to complete the work.

Sir W. P. Wood reported that the Committee on Real Property, consisting of himself, Mr. Walpole, and Mr. Ker, had met and deliberated on the best arrangement of the subject for the purposes of consolidation, and the best mode of conducting the process; that he had drawn up and submitted to his colleagues a sketch of the heads into which the subject should be divided; and that he had received from Mr. Ker a paper of observations by himself and Mr. Brickdale on that sketch, suggesting some difficulties and pointing out some preliminary questions which would require to be settled before the commencement of the work, and that he had prepared some notes in answer to those observations, which were now in the hands of Mr. Walpole, and which he believed would meet the points referred to by Ker.

June 27, 1855.

The Secretary laid before the Board:—

1. A Preliminary Report on the Law of Landlord and Tenant, by Mr. A. Bisset.
2. A Bill for consolidating the Statute Law relating to Treason and other Offences

against the State, by Mr. J. J. Lonsdale, being the first of a series of Bills for consolidating the whole Statute Criminal Law. The Lord Chief Justice of the Common Pleas and Mr. Baron Parke, to whom these Bills stand referred, directed the Secretary to request Mr. Lonsdale to proceed with the work, but to incorporate the whole subject in a single Bill.

3. A Bill for consolidating the Law of Prisons, by Mr. T. C. Anstey.

Mr. Anstey's Bill to be laid before Mr. J. F. Archbold, with a request that he would examine and test it, and point out any defects that he might detect, and any amendments that he could suggest, either in the way of condensation, improved arrangement, or otherwise.

The Lord Chancellor, after stating that he considered it desirable that a General Report, setting forth what has been done by the Board, and the course which it proposes to adopt in future, should be made to the Crown as soon as possible, proceeded to read the draft of a Report, which, with a few amendments, was agreed to.

[Several of the Minutes relate to the Fees claimed or paid to the Barristers employed to prepare the several Bills, but which we have not deemed it seemly to extract. We have also omitted the Memoranda of applications of several Gentlemen of the Bar to be employed by the Commissioners; and various suggestions postponed or negatived have also been omitted.—Ed. L. O.]

## LAW OF ATTORNEYS AND SOLICITORS.

### AGREEMENT TO CHARGE ONLY COSTS OUT OF POCKET.—LIEN.—DELIVERY OF PAPERS.

THE plaintiff retained, on Jan. 10, 1854, Mr. G., to act as his solicitor in a cause, and authorised him to obtain the usual order to change solicitors, which was accordingly done on Jan. 13. At the time of the retainer the plaintiff stated he considered the ordinary mode of remunerating solicitors objectionable in principle, but no other arrangement was made or even suggested.

Mr. G., however, on Jan. 20, wrote to the plaintiff, stating that he was not quite sure he understood the plaintiff's system of remuneration, and adding, "but until I have the pleasure of seeing you and of finally making some general and well-understood arrangement with you on the subject of costs, it shall be understood on my part, that beyond costs out of pocket I have no claim upon you personally." Mr. G. con-



tinued to act for the plaintiff without any arrangement, though he often requested the plaintiff to conclude the matter, and the plaintiff paid him the costs out of pocket, of which he delivered an account. In August, some communications took place, and on October 11, the plaintiff wrote to Mr. G., stating, he considered that according to the letter of Jan. 20, Mr. G., up to that time, was only entitled to such compensation as he thought fit to allow him, but that he wished Mr. G. to state his own ideas respecting it, and thenceforth to charge the ordinary professional costs. Mr. G., on October 21, replied, that he considered a certain sum a reasonable compensation, and declined to act as the plaintiff's solicitor in any matter until the question of remuneration should be settled. On Nov. 10, Messrs. R. and G., the new solicitors of the plaintiff, offered a sum for costs much less than the amount claimed by Mr. G., which he refused to accept, and he also declined to deliver up the papers.

Messrs. R. and G. thereupon moved for an order to deliver up to them the briefs, papers, &c., in connexion with the cause, on their undertaking to act on behalf of the plaintiff therein with all due diligence, and to receive the papers delivered to them without prejudice to any right of lien which Mr. G. might have thereto.

The *Master of the Rolls* held, that there was no concluded agreement by the solicitor to claim nothing as of right, but costs out of pocket, and said,—“I must follow *Heslop v. Metcalfe*, 8 Sim. 622; 3 Myl. & C. 183. Sir James Wigram in *Griffiths v. Griffiths*, 2 Hare, 587, made a like order, on the ground of discharge. The same order must be made as in *Heslop v. Metcalfe*, and the papers must be given up to the new solicitors.” *Wilson v. Emmett*, 19 Beav. 233.

## LAW OF COSTS.

### ON MOTION WHEN RESPONDENT DOES NOT APPEAR.

WHERE an order is taken upon an affidavit of service of the notice of motion, the party moving can only obtain that which is asked by the notice of motion. Consequently, where the notice of motion does not ask for costs, and the respondent does not appear, it is irregular to take an order for costs on an affidavit of service. *Pratt v. Walker*, 19 Beav. 261.

### ON REFUSED MOTION FOR INJUNCTION.

The plaintiffs moved for an injunction in the terms of the prayer of their bill, but the motion was refused. On the question of costs, the *Master of the Rolls* said,—“When I reserve the costs of a motion refused, I never make them fall on the defendant, but I sometimes make the costs of the plaintiffs costs in the cause. I will reserve the costs of the plaintiffs, and make the costs of the defendants costs in the cause.” *Norman v. Mitchell*, 19 Beav. 291.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

### ANNUAL PROVINCIAL MEETING.

THE Annual Provincial Meeting of this Association will be held at Birmingham, on Monday the 22nd of October next, at two o'clock, at the Theatre of the Birmingham and Midland Institute, 7, Cannon Street. The Members of the Association will afterwards dine together. A further meeting will also be held at the same place on the following day, at 10 o'clock.

The members of the Association resident at Birmingham have formed themselves into a Committee, in order to make the necessary local arrangements; and members purposing to be present at the meeting and to join the dinner, are requested to intimate their intention to *Arthur Ryland, Esq.*, Birmingham.

The order of the proceedings are as follow:—

1. That the Chairman or Deputy Chairman of the Committee, if present, be the Chairman of the meeting; otherwise that the Chairman be appointed by the meeting.

2. That the proceedings shall commence with an address from the Chairman, and shall comprise a review of the proceedings of the Committee during the past year.

3. That the time and place of the next meeting shall be fixed.

4. That this be followed by the reading of papers by members of the Society upon subjects connected with the Profession.

5. That no paper shall occupy more than half an hour in its reading.

6. That after the reading of each paper by its author, if present, and if not, then by the secretary, it shall be discussed by the members present, if they be so minded, before another paper is introduced to the meeting; and that each discussion shall be closed when so directed by the Chairman.

7. That every member desiring to communicate a paper to the meeting, shall inform the secretary of its title four weeks, and deliver the paper to the secretary one week prior to the meeting.

8. That the Committee shall decide the order in which papers shall be taken; and the secretary shall send to every member of the Association, with the circular convening the meeting, a list of the titles of the papers proposed to be read.

9. That the Committee shall have the power, with the consent of the author, to print and circulate such of the papers, or such extracts, as they see fit.

10. That whenever it may appear to the members at any meeting that any subject demands the especial attention of the Profession, some members or member shall be then and there appointed to collect and arrange such facts and opinions as may be necessary or useful for the elucidation of the subject; and to report thereon to the Committee.

## NOTICES OF NEW BOOKS.

*The Law and Practice of Bills of Sale, and Bills of Sale of Ships under the recent Statute, with Precedents, &c.* By JOSEPH BEAUMONT, Esq. Edited by the Editor of the Law Times. London: John Crockford. 1855. Pp. 244.

THIS useful book treats:—1. Of a bill of sale.

2. Of the parties.

3. The recitals and the covenants.

4. The assignment, and what passes thereby.

5. The habendum, proviso for redemption and power of sale.

6. The proviso for quiet enjoyment by the mortgagor till default.

7. Of the effect of bankruptcy on a bill of sale.

8. The assignees' title.

9. The effect of insolvency.

10. The rights of an execution creditor.

11. Subsequent incumbrances.

12 and 13. Of the 17 & 18 Vict. c. 36.

14 and 15. Of proceedings under a bill of sale.

16 and 17. Bills of sale of a ship.

18. Sales and mortgages of ships.

The Appendix contains the 17 & 18 Vict. c. 36, and numerous precedents, which will be useful to the practitioner.

## ENFRANCHISEMENT OF COPYHOLDS.

### COVENANT TO PRODUCE.

IF I understand the question put by your correspondent of last week, it is whether the copyholder—a tenant for life—who enfranchises under the compulsory provisions of the Act of 1852, can require a covenant for production of the lord's title-deeds and of the Court Rolls. A reference to the Copyhold Acts will show that no such covenant would be requisite.

As to the *title-deeds*.—Section 64 of the Act of 1841 (4 & 5 Vict. c. 35) provides for the lands, after enfranchisement under the Act, having the same title as that under which they were held at the time of enfranchisement; and that the same should not be subject to any estates, rights, &c., affecting the manor of which the same were holden. Section 53 of the Act of 1852 (15 & 16 Vict. c. 51) extends the above provision to enfranchisements under that Act. The necessity for inquiry into the lord's title, in addition to the copyhold title, will therefore not exist in enfranchisements under the Copyhold Acts.

As to the *Court Rolls*.—Section 20 of the Act of 1852, provides for inspection of the Court Rolls after enfranchisement by any person seised of or interested in the lands enfranchised. The provisions alluded to extend to enfranchisements effected by tenants for life as well as by copyholders in fee. R.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

*Master of the Rolls.*

*Mills v. Drutt.* July 19, 1855.

WILL.—CONSTRUCTION.—CLEAR ANNUAL SUM.—INVESTMENT.

A testator directed his executors to invest in some Government security such a sum as

would produce the clear annual sum of 40l., and to pay the dividends therein to his wife for life. The trustees invested in Navy Stock, which afterwards was converted into 3 per cents., whereby the income was reduced: Held, that her representatives were entitled on her death to have the deficit

*made good out of the fund upon the sale then taking place as directed by the will.*

THE testator, by his will, directed his executors to invest in the purchase of some Government security such a sum of money as would produce the clear annual sum of 40*l.*, and to pay the dividends thereof to his wife for life, and on her death the capital as therein directed. It appeared that the executors purchased 800*l.* Navy 5 per cents., and that the stock was now converted by Act of Parliament into 3 per cents. On the death of the tenant for life, her representative claimed to have the arrears of the deficiency paid to him out of the proceeds on the sale of the stock.

*Lloyd and Cory* for the plaintiff; *Palmer and Selwyn* for the executors; *Roupeil and Shebbears* for the parties entitled in remainder.

The Master of the Rolls said, that the will gave the widow a clear annual sum of 40*l.*, without directing how the fund was to be invested. The present case could not be distinguished from *May v. Bennett*, 1 Russ. 370, and there must be a decree for the plaintiff for payment of the arrears out of the capital sum, and for an account thereof.

#### Vice-Chancellor Mans.

*Silliburn v. Newport.* June 2, 1855.

**WILL.—CONSTRUCTION.—DISCRETION OF TRUSTEES, AFTER ADMINISTRATION SUIT.**

*After the marriage of the testator's daughter, the trustees of his will paid her one-half of the income of his real and personal estate, and the other to his wife, under a power in the will to do so at their discretion. They afterwards filed a bill to administer his estate: Held, that their right to exercise a discretion was not thereby gone, but that they might continue the payment of the income as before.*

THE testator, by his will, gave his real and personal estate in trust, to pay the annual income thereof to his wife for life, for her own support and the support, maintenance, and education of his daughter, and on her death, as therein directed. The will contained a power to the trustees at their discretion to apply, during the wife's life, not exceeding one-half of the income towards the maintenance and education, or otherwise, for the benefit of his daughter, as they might think proper, and also to raise 500*l.* on the daughter's marriage, and pay it towards her advancement. Upon the marriage of the daughter this sum had been raised and paid to the daughter, and the executors afterwards paid one-half of the income to her. This suit was subsequently instituted for the administration of the estate. The question was now raised whether the trustees could continue the payment of the money to the daughter after filing this bill.

The Vice-Chancellor held in the affirmative, and that their right to exercise a discretion was not gone by instituting a suit.

*Tupper v. Tupper.* July 17, 1855.

**BEQUEST TO CHARITY.—REVIVAL OF LEGACIES IN WILL BY VOIDNESS OF LEGACY IN CODICIL.**

*A testator, by a codicil, revoked three charitable bequests in his will and gave in lieu a legacy to a charity, but which was void under the 9 Geo. 2, c. 36: Held, that the former bequests were not revived.*

THE testator, by his will, directed his executors to raise a sum of 850*l.* and to pay the same among the following charities, namely,—300*l.* to the Missionary College of St. Augustine, at Canterbury; 300*l.* to the Society for Promoting the Employment of Additional Curates in Populous Places; and 250*l.* to the Tythe Redemption Trust. By a subsequent codicil, he revoked these legacies, and gave in lieu thereof a legacy of 1,000*l.* to the Treasurer of the Extension Fund of the House of Charity, in Rose Street, Soho. It appeared that this fund was for the purpose of providing land, and building thereon a home for lunatics, and was therefore void under the 9 Geo. 2, c. 36. The question was now raised, whether the other legacies were revoked.

*C. Hall* for the plaintiff; *Hadden* for the charity; *Batten, Cotton, Daniel, and Selwyn* for the charities mentioned in the will.

The Vice-Chancellor said, that as the testator had intimated a clear intention to revoke the previous legacies, that effect could not be interfered with on the failure of the gift in the codicil.

*Wright v. Lord Maidstone.* July 23, 1855.

**DESTROYED BILL OF EXCHANGE.—DEMURRER.—JURISDICTION.**

*A demurrer was allowed to a bill for a declaration of the defendant's liability on a destroyed bill of exchange, and held, that the plaintiff's remedy thereon was at law.*

IT appeared that the defendant had accepted a bill of exchange drawn on him by a Mr. Villiers, and which was renewed from time to time on its becoming due, and when the previous bill was destroyed. On the occasion of the last renewal, Mr. Villiers had handed the plaintiff a bill purporting to be duly accepted by the defendant, and the former bill was handed to Mr. Villiers and destroyed. It turned out, however, that the defendant's signature was a forgery, and on Mr. Villiers leaving the country, the plaintiff filed this bill for a declaration, that the defendant was liable on the former bill and for payment. To this bill there was a demurrer.

*Rolt and W. D. Lewis* in support; *Speed*, contra.

The Vice-Chancellor said, that the Court of Equity only interfered where the instrument was lost and not where it was admitted and proved to have been destroyed, in which case the Courts of Common Law possessed jurisdiction. The demurrer would be allowed, but with leave to amend.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“Still attorneyed at your service.”—*Shakspere.*

SATURDAY, SEPTEMBER 22, 1855.

### NEW LAW OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

THE new Statute (18 & 19 Vict. c. 67) “to facilitate the Remedies on Bills of Exchange and Promissory Notes by the prevention of frivolous and vexatious Defences to Actions thereon,” which received the Royal Assent on the 23rd July last, was laid before our readers on the 4th August.<sup>1</sup> It will come into operation from and after the 24th of October, and it may be convenient here to call attention to the alteration of the previous law which it has effected.

It should 1st be observed that it is optional with the holders of bills of exchange and promissory notes to avail themselves of the provisions of this Act, or to pursue the remedies previously provided. The proceedings under the Act are not compulsory, and no doubt in many cases the old mode of proceeding will be preferred.

2nd. The new course of proceeding under the Act must be taken within six months after the bill or note has become due; otherwise the ordinary process must be adopted.

The preamble recites that *bond fide* holders of dishonoured bills of exchange and promissory notes are often unjustly delayed and put to unnecessary expense in recovering the amount thereof by reason of frivolous or fictitious defences to actions thereon, and it is expedient that greater facilities than now exist should be given for the recovery of money due on such bills and notes.

The 1st section provides, that all actions

upon bills of exchange or promissory notes commenced within six months after the same shall have become due and payable, may be by writ of summons in the special form in the first schedule to the Act and indorsed as therein-mentioned. The writ warns the defendant, that unless within 12 days after service he obtains leave of one of the Judges to appear, the plaintiff may proceed to judgment and execution. Amongst other indorsements on the writ, the bill or note must be copied.

If the writ be issued by the plaintiff in person, he must state his residence with the name of the street and number of the house.

Leave to appear may be obtained at the Judges' Chambers, Serjeant's Inn, supported by affidavit showing that there is a defence to the action on the merits, or that it is reasonable that the defendant should be allowed to appear in the action.

If there should be no defence on filing an affidavit of personal service of the writ within the jurisdiction of the Court; or an order for leave to proceed, as provided by the Common Law Procedure Act, 1852, the plaintiff may at once sign judgment for the sum indorsed on the writ, with interest, and a sum for costs to be fixed by the Masters of the Superior Courts or any three of them, subject to the approval of the Judges. If the plaintiff should claim more than such fixed sum, the costs shall be fixed in the ordinary way, and the plaintiff on such judgment may issue execution forthwith.<sup>2</sup>

By the previous law, judgment might be signed in eight days, but execution could not be issued till the expiration of another

<sup>1</sup> See page 256, *ante*.

<sup>2</sup> The Second Schedule to the Act gives the Form in which Judgments are to be signed.

eight days. The time, therefore, has been shortened under the present Act by four days.

It will be necessary before next Term for the Masters to fix the amount of the costs, which evidently ought to be more than the costs of the ordinary writ of summons on account of the special facts and notices to be indorsed.

The 2nd section prescribes the terms on which an appearance and defence will be allowed, either on payment into Court of the sum indorsed on the writ, or upon affidavits satisfactory to the Judge, which disclose a *legal or equitable* defence or such facts as make it incumbent on the holder to prove *consideration*, or such other facts as the Judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the Judge may seem meet.

Even after judgments, the Court or Judge may, under special circumstances, set aside the judgment, and if necessary, stay or set aside execution and give leave to appear and defend (s. 3). And the Court or Judge may order the bill or note to be forthwith deposited with an Officer of the Court, and to stay proceedings until the plaintiff shall give security for the costs (s. 4).

It will be recollected that, in consequence of the numerous frauds practised by some bill discounters on needy and unwary persons, a Bill was brought into Parliament for the purpose of preventing such frauds, but various difficulties prevented its passing. The 4th section has probably been introduced to give the Judge jurisdiction in such cases, and we are glad that power has thus been placed in the proper hands beneficially to exercise it.

It is usual with bankers, through whose medium a large proportion of bills of exchange are presented for payment, in case of dishonour, to send them to a notary public to be again presented and noted. The expense of noting was not recoverable; but by the 5th section of this Act "the expenses incurred in *noting* for non-acceptance or nonpayment, or *otherwise*, by reason of such dishonour," are recoverable by the same remedies as the amount of the bill or note. We presume that this enactment gives only the expense of noting, and not of *protesting* as in the case of foreign bills. A doubt, however, may be raised on the words "or otherwise."

An alteration of the former law, in suing several persons on a bill or note, is effected

by the 6th section of the Act,—enabling the holder to issue *one writ* against all or any number of the parties, and enacting that such writ shall be the commencement of an action against the parties therein named, and subsequent proceedings take place as if separate writs had been issued.

On this provision, it is observable that an action may thus be pending for a long time over an indorser of a bill who has received no notice of its commencement. However, the other provisions of the Act entitle him to 12 days' notice, with power to apply to a Judge during that time if necessary.

The provisions of the Common Law Procedure Acts of 1852 and 1854, with all Rules of Court made thereunder, are made applicable to all proceedings under this Act (s. 7). And the provisions of this Act are made applicable to the Palatine Courts of Lancaster and Durham, and the Judges of such Courts, being Judges of the Superior Courts at Westminster, are empowered to frame rules and process necessary for the purpose (s. 8).

Her Majesty, also, by an Order in Council, may direct this Act to be applied to all Courts of Record in England and Wales; such order to be published in the *London Gazette*, and to come into operation at the end of a month (s. 9).

The Act does not extend to Ireland or Scotland (s. 10).

The Act may be cited as "The Summary Procedure on Bills of Exchange Act, 1855."

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages:—

- Purchasers' Protection, 18 Vict. c. 15,—p. 5.
- Lunacy Regulation Act, c. 13,—p. 32.
- Commons' Inclosure, c. 14,—p. 32.
- Newspaper Stamp Duties, c. 27,—p. 137.
- Sewers (House Drainage), c. 30,—p. 139.
- House of Commons' Proceedings, c. 33,—p. 139.
- Income Tax, c. 20,—p. 197.
- Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.
- Administration of Oaths Abroad, 18 & 19 Vict. c. 42,—p. 175.
- Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.
- Common Law Pleadings, c. 26,—p. 176.
- Infants' Marriage Settlements, c. 33,—p. 198.
- Palatine of Lancaster Trials, c. 45,—p. 241.

Bills of Exchange and Promissory Notes, c. 67,—p. 256.

Cinque Ports, c. 48,—p. 253.

Commons Inclosure (No. 2), c. 61,—p. 275.

Incumbered Estates Acts (Ireland) Continuance, c. 73,—p. 276.

Places of Religious Worship Registration, c. 81,—p. 276.

Friendly Societies, c. 63,—pp. 296, 319, 342.

Limited Liability, c. 133,—p. 316.

Despatch of Business, Court of Chancery, c. 134,—p. 338.

Charitable Trusts, 1855, c. 124,—p. 358.

Crown Suits, c. 90,—p. 376.

Criminal Justice, c. 126,—p. 377.

Merchant Shipping Amendment Act, c. 91,—p. 395.

Bills of Lading, c. 111,—p. 398.

Youthful Offenders, c. 97,—p. 399.

#### MERCHANT SHIPPING ACT AMENDMENT.

18 & 19 VICT. c. 91.

Short title of Act; 17 & 18 Vict. c. 104; s. 1.

*Colonial Lighthouses.*—Her Majesty may by order in Council fix dues for colonial lighthouses; s. 2.

No such dues to be levied in any colony without the consent of the colonial legislature; s. 3.

Mode of collecting the said dues; 17 & 18 Vict. c. 104, ss. 399, 400, 401; s. 4.

Dues to be paid over to her Majesty's Paymaster-General; s. 5.

Dues to be applied to expenses of lighthouses, &c., for which they are levied; s. 6.

Power to borrow money on security of dues; 17 & 18 Vict. c. 104, ss. 424, 425, 426; s. 7.

Accounts for each lighthouse, &c., to be kept, and laid before Parliament, and to be audited; 17 & 18 Vict. c. 104, s. 428; s. 8.

*Registry of Ships.*—Part II. of Merchant Shipping Act, 1854. Penalty on false declarations under Part II. of Merchant Shipping Act; 17 & 18 Vict. c. 104, s. 103; s. 9.

Shares in Shipping within the Trustee Act, 1850; 13 & 14 Vict. c. 60; s. 10.

Forms of Instruments; 17 & 18 Vict. c. 104, s. 96; s. 11.

Delivery of certificate upon transfer of registry; 17 & 18 Vict. c. 104, s. 90; s. 12.

Exemption of certain ships from having name painted on stern; 17 & 18 Vict. c. 104, s. 34; s. 13.

Ships measured under Rule II. may be measured under Rule I.; 17 & 18 Vict. c. 104, ss. 21 and 22; s. 14.

General register books in London; 17 & 18 Vict. c. 104, s. 107; s. 15.

*Masters and Seamen.*—Part III. of Merchant Shipping Act, 1854. Extension of provisions concerning the relief of destitute seamen; 17 & 18 Vict. c. 104, ss. 211, 212, and 213; s. 16.

Enactment concerning savings' banks extended to seamen in the Navy; 17 & 18 Vict. c. 104, s. 180; s. 17.

Additional powers of Naval Courts; 17 & 18 Vict. c. 104, ss. 260 to 266; s. 18.

*Wrecks, Casualties, and Salvage.*—Part VIII. of Merchant Shipping Act, 1854. In case of wreck of foreign ships, consul general to be deemed agent of owner; s. 19.

Remuneration for services by coast guard; s. 20.

*Legal Procedure.*—Part X. of Merchant Shipping Act, 1854. Jurisdiction in case of offences on board ship; 12 & 13 Vict. c. 96; s. 21.

*Miscellaneous.*—Part XI. of Merchant Shipping Act, 1854. Relief of destitute Lascars; s. 22.

Contracts may be made with natives of India, under certain conditions, binding them to go to the United Kingdom, and then to serve in other ships back to India or elsewhere; s. 23.

Saving of former enactments; 4 Geo. 4, c. 80, ss. 25 to 34; 17 & 18 Vict. c. 120, s. 16; s. 24.

The following are the Title and Sections of the Act:—

An Act to facilitate the Erection and Maintenance of Colonial Lighthouses, and otherwise to amend the Merchant Shipping Act, 1854. [14th August, 1855.]

Whereas it is expedient to make provisions for facilitating the erection and maintenance of lighthouses in the British possessions abroad, and otherwise to amend the Merchant Shipping Act, 1854: Be it therefore enacted as follows:

1. This Act may be cited as "The Merchant Shipping Act Amendment Act, 1855," and shall be taken to be part of the Merchant Shipping Act, 1854, and shall be construed accordingly.

#### *Colonial Lighthouses.*

2. In any case in which any lighthouse, buoy, or beacon has been or is hereafter erected or placed on or near the coasts of any British possession, by or with the consent of the legislative authorities of such possession, her Majesty may, by order in Council, fix such dues in respect thereof, to be paid by the owner or master of every ship which passes the same or derives benefit therefrom, as her Majesty may deem reasonable, and may in like manner from time to time increase, diminish, or repeal such dues, and from the time specified in such order for the commencement of the dues thereby fixed, increased, or diminished the same shall

be leviable throughout her Majesty's dominions in manner hereinafter-mentioned.

3. No such dues as aforesaid shall be levied in any colony unless and until the legislative authority in such colony has, either by address to the Crown, or by an Act or ordinance duly passed, signified its opinion that the same ought to be levied in such colony.

4. The said dues shall in the United Kingdom be collected by the same persons by whom, and by the same means, in the same manner, and subject to the same conditions, so far as circumstances permit, by, in, and subject to which the light dues leviable under the Merchant Shipping Act, 1854, are collected, and shall in each British possession abroad be collected by such persons as the governor of such possession abroad may appoint for the purpose, and shall be collected by the same means, in the same manner, and subject to the same conditions, so far as circumstances permit, by, in, and subject to which the light dues leviable under the Merchant Shipping Act, 1854, are paid and collected, or by such other means, in such other manner, and subject to such other conditions as the legislative authority in such possession may direct.

5. All dues levied under this Act shall be paid over to her Majesty's Paymaster-General at such times and in such manner as the Board of Trade may direct, and shall be applied, paid, and dealt with by him, for the purposes hereinafter-mentioned, in such manner as such Board may direct.

6. The dues levied under the authority of this Act in respect of any such lighthouse, buoy, or beacon as aforesaid shall, after deducting any expenses incurred in collecting the same, be applied for the purpose of paying the expenses incurred in erecting and maintaining such lighthouse, buoy, or beacon, and for no other purpose whatever.

7. For the purpose of constructing or repairing any such lighthouse, buoy, or beacon as aforesaid, the Board of Trade may raise, upon the security of the dues to be levied in respect thereof, such sums of money as they may deem fit; and the Commissioners of her Majesty's Treasury, out of any moneys which may be provided by Parliament, the Public Works Loan Commissioners, or any other person or body of persons, may advance the same accordingly, such advances to be made in the same manner, with the same powers, and subject to the same provisions, so far as circumstances permit, in, with, and subject to which, under the Merchant Shipping Act, 1854, advances may be made upon the security of the Mercantile Marine Fund for the Construction and Repair of Lighthouses in the United Kingdom.

8. Accounts shall be kept of all sums expended in the construction, repair, or maintenance of every lighthouse, buoy, or beacon, in the British possessions abroad for which dues are levied under the authority of this Act, and of the dues received in respect thereof, in such manner as the Board of Trade may direct, and shall be laid before Parliament annually; and

the said accounts shall be audited in such manner as her Majesty may by Order in Council direct.

### *Registry of Ships.*

9. Any person who, in any declaration made in the presence of or produced to any registrar of shipping, in pursuance of the second part of the Merchant Shipping Act, 1854, or in any documents or other evidence produced to such registrar, wilfully makes, or assists in making or procures to be made, any false statement concerning the title to or the ownership of or to the interests existing in any ship, or any share or shares in any ship, or who utters, produces, or makes use of any declaration or document containing any such false statement, knowing the same to be false, shall be guilty of a misdemeanor.

10. Shares in ships registered under the said Merchant Shipping Act, 1854, shall be deemed to be included in the word "Stock," as defined by the Trustee Act, 1850, and the provisions of such last-mentioned Act shall be applicable to such shares accordingly.

11. In any case in which any bill of sale, mortgage, or other instrument for the disposal or transfer of any ship or any share or shares therein or of any interest therein is made in any form or contains any particulars other than the form and particulars prescribed and approved for the purpose by or in pursuance of the Merchant Shipping Act, 1854, no registrar shall be required to record the same without the express direction of the Commissioners of her Majesty's Customs.

12. Upon the transfer of the registry of a ship from one port to another, the certificate of registry required by the 90th section of the Merchant Shipping Act, 1854, to be delivered up for that purpose, may be delivered up to the registrar of either of such ports.

13. The Commissioners of Customs may, with the consent of the Board of Trade, exempt any pleasure yacht from the provision contained in the 34th section of the Merchant Shipping Act, 1854, which requires the name of every ship and the port to which she belongs to be painted on her stern.

14. The owner of any ship which is measured under Rule II. contained in the 22nd section of the Merchant Shipping Act, 1854, may at any subsequent period apply to the Commissioners of Customs to have the said ship remeasured under Rule I. contained in the 21st section of the same Act, and the said Commissioners may thereupon, and upon payment of such fee not exceeding 7s. 6d. for each transverse section as they may authorise, direct the said ship to be remeasured accordingly, and the number denoting the register tonnage shall be altered accordingly.

15. The copy or transcript of the register of any British ship which is kept by the chief registrar of shipping at the Custom House in London, or by the registrar-general of seamen, under the direction of her Majesty's Commissioners of Customs or of the Board of Trade,

shall have the same effect to all intents and purposes as the original register of which the same is a copy or transcript.

#### *Masters and Seamen.*

16. The Board of Trade may issue instructions concerning the relief to be administered to distressed seamen and apprentices in pursuance of the 211th and 212th sections of the Merchant Shipping Act, 1854, and may by such instructions determine in what cases and under what circumstances and conditions such relief is to be administered; and all powers of recovering expenses incurred with respect to distressed seamen and apprentices, which by the 213th section of the said Act are given to the Board of Trade, shall extend to all expenses incurred by any foreign government for the purposes aforesaid, and repaid to such government by her Majesty's Government, and shall likewise extend to any expenses incurred by the conveying home such seamen or apprentices in foreign as well as British ships; and all provisions concerning the relief of distressed seamen and apprentices, being subjects of her Majesty, which are contained in the said sections of the said Act, and in this section, shall extend to such seamen and apprentices, not being subjects of her Majesty, as are reduced to distress in foreign parts by reason of their having been shipwrecked, discharged, or left behind from any British ship; subject, nevertheless, to such modifications and directions concerning the cases in which relief is to be given to such foreigners, and the country to which they are to be sent, as the Board of Trade may, under the circumstances, think fit to make and issue.

17. The enactment of the Merchant Shipping Act, 1854, relating to savings' banks shall apply to all seamen, and to their wives and families, whether such seamen belong to the Royal Navy or to the merchant service, or to any other sea service.

18. Any Naval Court summoned, under the provisions of the Merchant Shipping Act, 1854, to hear any complaint touching the conduct of the Master or any of the crew of any ship, shall, in addition to the powers given to it by the said Act, have power to try the said Master or any of the said crew for any offences against the Merchant Shipping Act, 1854, in respect of which two justices would, if the case were tried in the United Kingdom, have power to convict summarily, and by order duly made to inflict the same punishments for such offences which two justices might in the case aforesaid inflict upon summary conviction; provided, that in cases where an offender is sentenced to imprisonment the sentence shall be confirmed in writing by the senior naval or consular officer present at the place where the Court is held, and the place of imprisonment, whether on land or on board ship, shall be approved by him as a proper place for the purpose, and copies of all sentences made by any Naval Court summoned to hear any such complaint as aforesaid shall be sent to the commander-in-chief or senior naval officer of the station.

#### *Wrecks, Casualties, and Salvage.*

19. Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or belonging to or forming part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the consul general of the country to which such ship, or, in the case of cargo, to which the owners of such cargo, may have belonged, or any consular officer of such country authorised in that behalf by any treaty or agreement with such country, shall, in the absence of the owner of such ship or articles, and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles.

20. In cases where services are rendered by officers or men of the coast guard service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the said services remuneration according to a scale to be fixed by the Board of Trade, so, however, that such scale shall not exceed any scale by which payment to officers and men of the coast guard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated; and such remuneration shall be recoverable by the same means and shall be paid to the same persons and accounted for and applied in the same manner as fees received by receivers appointed under the Merchant Shipping Act, 1854.

#### *Legal Procedure.*

21. If any person, being a British subject, charged with having committed any crime or offence on board any British ship on the high seas or in any foreign port or harbour, or if any person, not being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any Court of Justice in her Majesty's dominions which would have had cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such Court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits: Provided, that nothing contained in this section shall be construed to alter or interfere with the Act of the 13 Vict. c. 96.

#### *Miscellaneous.*

22. It shall be the duty of the East India Company to take charge of and send home or otherwise provide for all persons, being Lascars or other natives of the territories under the government of the said company, who are found destitute in the United Kingdom; and if any such person is relieved and maintained



by any guardians, overseers, or other persons administering the relief of the poor, such overseers, guardians, or other persons may, by letter sent through the post or otherwise, give notice thereof in writing to the secretary of the Court of Directors of the East India Company, specifying, so far as is practicable, the following particulars; viz.,—

1. The name of the person so relieved or maintained :
2. The presidency or district or part of the territories of the East India Company of which he professes to be a native :
3. The name of the ship in which he was brought to the United Kingdom :
4. The port or place abroad from which such ship sailed, and the port or place in the United Kingdom at which such ship arrived, when he was so brought to the United Kingdom, and the time of such arrival :

And the said East India Company shall repay to the said overseers, guardians, or other persons, out of the revenue of the said company, all moneys duly expended by them in relieving or maintaining such destitute person, after the time at which such notice aforesaid is sent or otherwise given.

23. It shall be lawful for any master or owner of a ship or his agent to enter into agreements with Lascars or natives of the territories of the East India Company, binding them to proceed to any port or ports in the United Kingdom, either as seamen or passengers, and there to enter into a further agreement to serve as seamen in any ship which may happen to be there, and to be bound to any port in the territories of the East India Company; provided that every such original agreement shall be made in such form, and shall contain such provisions, and shall be executed in such manner, and under such conditions for securing the return of such Lascars or natives to their own country, and for other purposes, as the Governor-General of India in Council, or the governors of the respective presidencies in which the original agreement is made, in council may direct; and if any Lascar or other person who has bound himself by any such original agreement is, on arriving in the United Kingdom, required to enter into a further agreement to serve as a seaman in any ship bound to any port in the territories of the East India Company, and if it is certified by some officer appointed for that purpose by the East India Company that such further agreement is a proper agreement in all respects for such Lascar or other person to enter into, and is in accordance with the original agreement, and that the ship to which such further agreement relates is in all respects a proper ship for such Lascar or other person to serve in, and that there is not, in the opinion of such officer, any objection to the full performance of the said original agreement, such Lascar or other person shall be deemed to be engaged under such further agreement, and to serve as a seaman in the ship to which it relates, and shall thereupon

be deemed to be for all purposes one of the crew of the ship; and for every Lascar or other person in respect of whom such certificate is applied for, the person applying for the same shall pay to such officer as aforesaid such fee as the East India Company may appoint, not exceeding 10s.

24. Nothing herein contained shall be deemed to repeal or affect any provisions contained in the 25th, 26th, 27th, 28th, 29th, 30th, 31st or 34th sections of the Act of the 4 Geo. 4, c. 80, or in the 16th section of the Act of the 18 Vict. c. 120.

#### BILLS OF LADING.

18 & 19 VICT. c. 111.

Rights under bills of lading to vest in consignee or endorsee; s. 1.

Not to affect right of stoppage in transitu or claims for freight; s. 2.

Bill of lading in hands of consignee, &c., conclusive evidence of the shipment as against Master, &c. Proviso; s. 3.

The following are the Title and Sections of the Act :—

An Act to amend the Law relating to Bills of Lading. [14th August, 1855.]

Whereas by the custom of merchants a bill of lading of goods being transferable by endorsement the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property: And whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bona fide* holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid: Be it therefore enacted, as follows:

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

3. Every bill of lading in the hands of a consignee or endorsee for valuable considera-

tion representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board: Provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

#### YOUTHFUL OFFENDERS.

18 & 19 VICT. c. 97.

The preamble recites the 17 & 18 Vict. c. 86.

Sects. 5 and 6 of the Act repealed; s. 1.

Provision for enforcing contribution by parents to the maintenance of juvenile offenders in reformatory schools; s. 2.

Recovery of sums ordered to be paid; s. 3.

Contribution how to be enforced in Scotland; s. 4

Payments may be remitted by Secretary of State or Lord Advocate; s. 5.

In Scotland justices of peace to have same power with sheriff; s. 6.

Powers given to sheriffs, &c., under 17 & 18 Vict. c. 74, may be exercised by justices; s. 7.

The following are the Title and Sections of the Act:—

An Act to amend the Act for the better Care and Reformation of Youthful Offenders, and the Act to render Reformatory and Industrial Schools in Scotland more available for the benefit of Vagrant Children.

[14th August, 1855.]

Whereas it is expedient to amend the 17 & 18 Vict. c. 86, "for the better Care and Reformation of Youthful Offenders in Great Britain," so far as respects the provision thereby made for charging the parent or step-parent of an offender in certain cases with payments towards his maintenance or support: Be it therefore enacted, as follows:

1. Sections 5 and 6 of the said Act shall be repealed.

2. In every case in which any juvenile offender shall be detained in a reformatory school under the said Act, the parent or step-parent, if of sufficient ability, shall be liable to contribute to his support and maintenance a sum not exceeding 5s. a week; and it shall be lawful in England and Wales for any two justices of the peace, upon the complaint of any person authorised by one of her Majesty's Principal

Secretaries of State to take proceedings in that behalf, to summon the parent or step-parent, as the case may be, and examine into his or her ability, and (if on consideration of all the circumstances of the case they think fit) to make an order upon him or her for such weekly payment, not exceeding 5s. per week, as they shall think reasonable, during the whole or any part of the detention of such juvenile offender in such reformatory school, such payment to be made at such times as by such order may be directed to the person so authorised to take proceedings as aforesaid, or to such person as the Secretary of State may from time to time appoint to receive the same, and by him to be accounted for and paid as the Commissioners of her Majesty's Treasury may direct.

3. In case default be made for the space of 14 days in payment of any sum of money which may have become payable by such parent or step-parent under such order, such sum of money shall in every such case be levied upon the goods and chattels of the defendant by distress and sale thereof; and if it shall appear to the said justices on confession of defendants or otherwise, or if it shall be returned to the warrant of distress in any such case that no sufficient goods of the party against whom such warrant shall have been issued can be found, it shall be lawful for the justice to whom such return is made, or for any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, by his warrant as aforesaid, to commit the defendant to the house of correction or common gaol for any term not exceeding ten days, unless the sum to be paid, and all costs and charges of the distress, and of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

4. In Scotland an action for payment of sums for the support and maintenance of a juvenile offender under the said Act shall and may be raised before the sheriff or any two justices of the peace within the county in which sentence was passed on the offender, or in which the defender in such action may happen to reside; and such action shall and may be brought by the procurator fiscal of the Sheriff Court of such county, and by no one else; and it shall be lawful for the sheriff or justices before whom such action is brought to inquire into the circumstances of the party sued, and to decern for payment of such weekly sum not exceeding 5s. per week during the period of detention of such offender as he or they shall think fit, or, in his or their discretion, to dismiss the action; and such decree for payment of a weekly sum shall be held to be and have all the effect of a decree in each week for payment of the sum ordered to be paid for such week; and the sums recovered shall be accounted for and paid as the Commissioners of her Majesty's Treasury may direct.

5. It shall be lawful for one of her Majesty's

Principal Secretaries of State, or in Scotland for the Lord Advocate, from time to time, where such Secretary of State or Lord Advocate shall in his discretion think fit, to remit all or any part of any weekly payment which may have been made payable by any order under this Act.

6. In Scotland any two or more justices of the peace shall within the bounds of their jurisdiction have the same powers as are by the said recited Act conferred on any sheriff, magistrate of a burgh, or police magistrate.

7. And whereas by the Act of the last Session of Parliament, c. 74, intituled "An Act to render Reformatory and Industrial Schools in Scotland more available for the Benefit of Vagrant children," certain powers are given to be exercised in Scotland by sheriffs or magistrates: Be it enacted, That all such powers may be exercised by any justice of the peace in Scotland within the limits of his jurisdiction; and the word "Magistrate" as used in the said last-mentioned Act shall be deemed to include the words "Justice of the Peace."

## MERCANTILE LAW.

### SECOND REPORT OF THE COMMISSIONERS.

*To the Queen's Most Excellent Majesty in her High Court of Chancery.*

[Continued from page 387.]

### V. BAILMENT OR DILIGENCE PRESTABLE Carriers.

The Law of Carriers is not the same in the three countries. In England and Ireland the carrier is liable for loss by accidental fire; in Scotland not. We think the English and Irish rule should be adopted. We see no principle which makes the carrier liable for accidental losses in general which does not apply to loss by accidental fire.

### VI. SHIPPING.

#### *Disagreement among Owners.—Enforcing Sale.*

Differences exist between the Laws of England and Ireland and of Scotland in cases of disagreement among joint owners of a ship, which it is desirable should cease, as their existence is calculated to give rise to great difficulties in the event of some of the owners living under one law and others under the other. In England and Ireland when there is a disagreement as to the employment of the ship the majority rules, the minority being only entitled to security for their share, but having no interest in the result of the employment, and having no power of compelling a sale. In Scotland, in addition to the remedy which may be had in England, any part owner may put an end to the joint ownership.

By the Law of Scotland, where the owners differ as to the employment of the ship or not, the holders of one-half or more of the shares may compel a public sale; and the minority or any one of the joint owners is entitled to offer his share at a certain price to the other owners,

and if the offer is not accepted, he may, by an action against the other owners, termed an action of "sett and sale," demand that they shall be decreed either to take his share at a certain price named by him, or to let him have their shares at the same rate, or otherwise that the vessel shall be sold by public auction, under the direction of the Court, and the price divided among the owners, according to their respective shares. If the defenders to this action accept either alternative offered them by the pursuer, a decree is made in terms thereof; but if they do not, then a judicial sale is ordered, and the price realised is divided among the several joint owners according to their shares.

We consider this a useful remedy, and it does not occur to us that its introduction into the Law of England and Ireland would be attended with any practical mischief. For the alternative form of the offer—buy my shares or sell me yours, or let the ship itself be publicly sold—which the owner wishing to put an end to the joint ownership has to make, will on the one hand deter him from demanding too much for his share, lest the other owners should adopt the second alternative, and sell him their shares at his own price, and on the other hand, supposing his scheme to be to obtain the shares of the other owners at an under-value, he will avoid estimating the shares at too low a price, lest the other owners should take his share at such inadequate price; and further, if it were inconvenient to the other owners either to buy his shares or to sell their own, this inconvenience would be obviated by their adopting the remaining alternative, that the ship be sold by public auction.

But we hesitate to recommend that this remedy of the Scotch Law shall be introduced into the Law of England and Ireland: for, though we have consulted the principal Chambers of Commerce in the three countries, the answers we have received do not furnish sufficient information as to the opinions of practical shipowners on this subject; and the change might lead to inconvenient consequences which we do not foresee.

#### *Repairs in Home Port.*

With regard to the remedies of shipbuilders for repairs done to ships in the ports of England, Scotland, and Ireland, the ports of any one of those countries are deemed to be foreign ports in the Courts of the other countries. In order to assimilate the rights of shipbuilders in the several ports of the United Kingdom, we propose that every port in the United Kingdom (including the Isle of Man) shall for this purpose be deemed a home port in the three countries.

### VII. PARTNERSHIP.

#### 1. *Private Partnership.—Its Nature.*

By the Law of England and Ireland a private partnership of two or more persons is not recognised separately from the co-partners of which it is composed: but by the Law of Scotland a private partnership is deemed to be a separate person in law, capable of entering into

obligations and contracts, of holding personal property, and of carrying on legal proceedings, by its distinctive name or firm as its individual appellation. To these opposite principles many important practical differences in the laws of the three countries may be traced.

In Scotland, in unison with the Scottish principle, a partnership may sue, or be sued by any of its partners, and it is no objection to an action at the instance of one partnership against another, that there are one or more partners common to both. The law is the reverse in England and Ireland.

Again, in Scotland a partnership may sue or be sued by its personal appellation alone, whether the partnership be pursuer or defender. This rule, however, applies only where the company firm includes the name of one or more of the partners; *e. g.* "John Smith & Co.," "Smith, Brown, & Co." If the appellation of the partnership be descriptive merely, *e. g.* "The British Iron Company," it is necessary that the names of three at least of the members described as suing on behalf of themselves and all the other partners be joined along with the descriptive firm; and three will be sufficient however numerous the partners may be. In England and Ireland there is no place for this distinction, because it is not the partnership or company that sue or is sued, but the co-partners carrying on business under the company firm, or designation; and these co-partners are viewed as joint tenants or joint debtors, or as jointly interested, and therefore it is necessary that all should concur in the action if plaintiffs, or be called before the Court if defendants. In Equity, indeed, if the partners are so numerous that it is impracticable to bring them all before the Court without great inconvenience, a few may sue on behalf of all.

We are of opinion that the principle of the Scottish Law, which recognises a partnership as a distinct and separate person, is a very convenient and useful one, and we recommend its introduction into the Law of England and Ireland. But we at the same time think that regulations should be made for enabling persons who have occasion to deal with partnerships to ascertain and prove who the partners are. We consider that a register of partnerships would be desirable as part of such regulations. If these regulations were established, there would be no reason for continuing the distinction observed in practice in Scotland between merely descriptive or anonymous firms, and firms containing the names of partners.

*Execution. — How Liability as Partner ascertained.*

In Scotland a creditor who has obtained a decree against a partnership may proceed with execution against any person he may think proper to assert to be a partner, without any previous proceeding of a judicial nature, with the view of establishing the fact that the person so proceeded against was a partner. In England and Ireland, in cases of ordinary partnerships, the occasion can never arise, as all the

co-partners must be joined in the action in which the judgment is obtained, and partners not joined would be discharged of the debt by the judgment recovered; but where a judgment is obtained against a public officer of a company authorised to sue and be sued in its behalf, execution cannot be obtained against individual partners until authorised by a judicial proceeding in which the question whether the party proposed to be proceeded against be a partner or not is ascertained.

We think the Scottish Law in this respect is unjust, and may lead to great oppression, and that it should be assimilated to the Law of England and Ireland; but the separate judicial proceeding would be necessary only in cases where the names of the partners are not in the register proposed above, or are not included in the action and judgment against the company.

*Whether ground of Defence against Co-partner available in Action by all.*

In England and Ireland, if a defendant sued by co-partners has a valid defence against any one of them, it is available to him as a good defence against the action, but in Scotland a defence good against any one or more of the partners would not for that reason be available as a defence to an action by the company. We recommend that in this respect also the Law of England and Ireland should be assimilated to the Law of Scotland.

*Release by one Co-partner.*

By the Law of England and Ireland any one partner may, pending an action or suit by the co-partners, gratuitously release the defendant from the whole cause of action or suit; but a partner has no such power in Scotland. We consider that the Scotch Law in this respect should be extended to England and Ireland, for although it may be convenient, as a general rule, that each partner should have an authority to bind his co-partners in all matters relating to the co-partnership,—and this authority is also recognised in the Law of Scotland,—yet we think that a partner ought not to have the power of defeating an action actually in dependence at the suit of the company.

*Power of one Co-partner to bind the others by Seal.*

In England and Ireland it is a general rule that a partner cannot bind his co-partners by an instrument under seal; but there is no such restriction in Scotland as to the form of the obligation; and we are of opinion that a partner ought to have power to bind his co-partners, in transactions in the ordinary course of their business, in any form in which he can bind himself.

*Set-off.*

In an action against co-partners as such, in England and Ireland, a debt due from the plaintiff to one or some of the co-partners cannot be set-off against the claim of the plaintiff; and in like manner in an action against one or more of the co-partners individually, a debt due from the plaintiff to all the co-partners as

such cannot be set-off against the plaintiff's claim. But in both these instances there would be the right of set-off in Scotland.

We prefer the Scotch Law in the first of these two instances. We do not think it equitable that a pursuer should recover from a company without satisfying a debt which he may be owing to any of the co-partners. Each partner is liable in solido for the whole debts of the partnership, and if a creditor of the company were to proceed against a partner individually, such partner would be entitled to set-off any debt which might be owing to himself from the pursuer; and we see no reason why such debt should not also be set-off when the demand is made against the partnership, if the individual partner to whom it is owing is willing that his debt should in this way be provided for, and this willingness may be reasonably and safely inferred when the demand of set-off is made by the company. We therefore recommend that the Law of England and Ireland be assimilated to the Law of Scotland in this respect.

But we think that the Law of Scotland should be assimilated to the Law of England and Ireland in regard to the second instance of set-off above-mentioned, viz., that in an action against one or more members of a partnership individually the defendant or defendants should not be entitled to set-off a debt due from the plaintiff to the partnership; for the partnership cannot be said to be before the Court or to express its willingness to the set-off merely because it is pleaded by their partner.

#### *Notice of retirement of dormant Partner.*

In England and Ireland a dormant partner retiring from a partnership may avoid liability for the subsequent engagements of his co-partners, if he gives special notice of his retirement to those persons at that time having relations with the partnership who were aware of the dormant partner's connexion with it; but he need not give notice to any other persons, either specially or by public advertisement. In Scotland, on the other hand, a dormant partner is, in regard to liability for subsequent engagements, viewed in the same light as an ostensible partner; and therefore a dormant partner, on retiring from the partnership, must, in order to avoid liability for subsequent engagements, give special notice of his retirement to all persons at that time having relations with the partnership, whether they were or were not aware of the dormant partner's connexion with it; and he must also give public notice by advertisement.

We are of opinion that in this respect the Law of Scotland should be assimilated to the Law of England and Ireland.

#### *2. Joint-Stock Companies.*

With regard to joint-stock companies, as distinguished from private partnerships, considerable differences exist between the Laws of the three Kingdoms. These differences arise mainly from the circumstance that joint-stock companies in Scotland may be left, and in general are left, to the operation of the Common Law,

while in England and Ireland they are governed by special regulations introduced by sundry Acts of Parliament. We are not prepared to recommend assimilation of these laws, either by extending to Scotland the statutory regulations as they are now in force in England and Ireland—for we think these regulations are liable to many objections—nor by adopting in England and Ireland the Scottish Law, which would have the effect of abolishing the statutory system; but we think that it would be advantageous if a complete system of registration, accompanied by proper regulations, were introduced for the whole United Kingdom for the government of joint-stock companies.

[To be continued.]

### PROPOSED INTERNATIONAL COUNCIL.

A PAMPHLET has just been published by Mr. John Turner, a solicitor, comprising "Observations on the feasibility of forming an International Council and Armed Executive for adjusting National Disputes and obviating the necessity of War."

This publication, coming from a member of the Profession, is entitled to due consideration in these pages. The writer anticipates an opposition to his scheme on account of its difficulty and the distaste with which it will be viewed by statesmen and diplomatists; but he looks to the people in general for support:—to those who are burdened with taxes to defray the enormous expenses of the war,—to those who feel and are capable of realising the evils of war,—to the Christian community in particular; and to all who are impressed with the sentiments of justice, mercy, and humanity. He does not imagine that more will be accomplished for a considerable period than diminishing the probabilities of war; but he contends for the commencement of measures that may ultimately lead to the establishment of the "International Council" he proposes.

The component parts of the assembly he recommends are thus described. He says,—

"In our own country flourishes many an illustrious individual, eminent in talent, natural and acquired, and of integrity so unimpeachable, that rulers and subjects would acquiesce in his decision on any private dispute however important. In neighbouring France reigns a Prince who has achieved a moral victory, greater than the splendid triumphs of the Cæsars. In the few years of his government, by a display of liberality and justice, not by bellicose manifestations, has he overcome the

<sup>1</sup> Effingham Wilson, Royal Exchange, 1855.

prejudices of the British nation; and we need scarcely remind our readers, how far the warm reception lately accorded to himself and his amiable consort, proves our earnest sympathies, enlisted in behalf of a ruler, who, by holding forth the right-hand of amity, has virtually united the inhabitants of England and France, inveterate enemies, with but slight intermission, for upwards of five hundred years. His empire, alike with our own, possesses highly-gifted politicians and noble-minded sages, whose dicta would stand current in any private controversy. Names of world-wide celebrity may be found in the numerous states of Germany, and our transatlantic brethren in the great republic of the west, must not be pretermitted, fertile in wisdom and probity, capable of reflecting lustre on any age or country.

"In men of such exalted worth, if all mankind would individually repose implicit confidence, why should not collective communities place equal reliance on the same? In the imperfect system extant by means of ambassadors, this trust is fixed in a minor degree; and it may well be claimed for a Council of Notables, that a more extended, and in fact unlimited, reliance rest on their decisions."

The Author next proceeds to consider the means of constituting the proposed tribunal.

"In England the members should be nominated by Parliament, subject to the approval of the Sovereign. In France and in other continental states a similar method might be adopted; but the precise mode of election could be assimilated to the general procedure in representative cases usually practised by the constituents of each country furnishing its delegates.

"The total of the assemblants would depend on the number of potentates and governments disposed to identify themselves with the movement; all concordant states, however, should be numerically equal contributors to the amount; and, though the co-operation of the second-rate and minor governments may be considered of trivial importance in the league, yet, for founding a solid basis of peace, and rendering war, if not a mere *nomins umbra*, a *dernier resort*, and that only when sanctioned by the universal voice of civilized humanity throughout the world, no country, however remote, no state, however insignificant, ought to fail in remonstrance against the oppressor, or be debarred from sending its proxy to the pacific congress; in which we would hope that ultimately no prince or people would continue unrepresented.

"That the idea of obviating injury by the imperious tide of public opinion, is not so impracticable as may at first glance seem is exemplified in what is called the law of nations, comprising ambassadorial rights, and the privileges of a flag of truce, that have no extraneous protection other than the universal adoption of civilized man, and which, although no

one is coerced to obey, few are found so audacious as to infringe.

"England and France might initiate such a tribunal on their joint responsibility; and other countries severally adopting the same, on recognition of its necessity and advantages, would not be tardy in countenance and support; and finally an offensive and defensive alliance, reciprocally subservient, and mutually coercive, would eventuate in the secure enjoyment of international anity.

"Assuming the issue of deliberation in the establishment of such an institution, the next point for consideration will be, where, when, and on what occasions, ought a tribunal so constituted to hold its meetings.

"It may be presumed that the position of the British members of the Court alluded to, would be by virtue of their office, of equal rank, and take precedence with privy councillors and peers of the realm, and that these honours would continue, not solely till the expiration of their term of membership, but during the remainder of their lives."

Of the mode of proceeding, if such a tribunal could be established, Mr. Turner suggests, that

"The assembly should be held in a locality conveniently central, and accessible to all the countries contributing representatives, and should take place annually at a stated period, whether there were occasion or not for its official interference; mainly for the purpose of consolidating the due relation between the concordant states, and adjusting matters of minor import and technical points, which if left unsettled till the extraordinary assemblies, would, in the course of debate, materially retard the despatch of more important business.

"On serious differences arising between governments, upon notification by either party to the president of the tribunal, who would of necessity be well known to and approved by all the assenting powers—should the urgency of the case militate against waiting for the general yearly meeting—he would summon the council together in such a place as should be deemed most suitable, proceed to a strict investigation of the matter at issue, and, on the sense of the meeting being notified by a majority of votes, pass a definitive decree, which, if resisted, would be enforced by the armed executive with all the appliances of modern science, and all the energy of a gallant army nerved to duty by the consciousness of being administrators of judicial law."

The pamphlet professes only to give some few provisional hints which may eventually produce the desired effect, by inducing men of talent and influence to bestow their attention on the subject. For the sake of illustration, Mr. Turner supposes a *casus belli* brought before the International Council.

"The disputants each send deputed ambassadors to the meeting: should either party

object to that preliminary, it would be a virtual confession of the instability of his cause. The tribunal attends to the argument adduced on both sides, and by requisite investigations, obtains the clearest possible knowledge of all the bearings of the facts; and, after careful debate and reflection, prepares a written adjudication, attested by all the attendant tribunes or members. In case of diversity of opinion, the majority to rule; but the dissentients to record their protest in writing, stating their grounds for non-approval. This judgment, transcribed in duplicate, should be forwarded, together with a registered copy of the dissent, to the governments desiring the arbitration of the council. Should the criminated appellant, after the solemn decree of the tribunal, commence active hostilities in despite thereof—as it is not an indefensible assumption that every civilized community would have agreed to succumb to the decision of the meeting—that the very population within the territories of the wrongful agent, would in a vast majority be inimical to warlike measures; the judgment of the Council being promulgated throughout the world, its flagrant violation would doubtless raise such a host of enemies in all nations of the earth, that few sovereigns, however absolute, would be found daring enough to incur the risk of internal dissensions consequent on divided views, and brave the torrent of general indignation, amidst the difficulties of an isolated position; and, ultimately, the most self-willed and despotic would be compelled to submit to the jurisdiction of the International Tribunal."

We have felt it due to the writer, thus to call the attention of our readers to his suggestions, and to recommend to their consideration the several statements and arguments which will be found in the pamphlet in support of the proposition.

### ELOQUENCE OF THE LATE MR. SHEIL.

FROM the "Sketches Legal and Political, of the late Right Hon. Richard Lalor Sheil," (with notes by M. W. Savage, Esq.,) we extract the following passages from a speech delivered by Mr. Sheil, after the assizes, at which no less than 380 criminal cases appeared on the calendar, many of them of a most fearful and atrocious nature. Mr. Sheil considered that a favourable opportunity presented itself for giving a salutary admonition to the people, and a public meeting was convened, at which a vast number attended. He said,—

"The recollection of what I have seen and heard during the present assize, is enough to freeze the blood. Well might Judge Burton, who is a good and tender-hearted man,—well might he say, with tears in his eyes, that he

had not in the course of his judicial experience beheld so frightful a mass of enormities as the calendar presented. How deep a stain have those misdeeds left upon the character of your county, and what efforts should not be made by every man of ordinary humanity, to arrest the progress of villany, which is rolling in a torrent of blood, and bearing down all the restraints of law, morality, and religion before it. Look, for example, at the murder of the Sheas, and tell me if there be anything in the records of horror by which that accursed deed has been excelled! The unborn child, the little innocent who had never lifted its innocent hands, or breathed the air of heaven—the little child in its mother's womb. . . . I do not wonder that the tears which flow down the cheeks of many a rude face about me should bear attestation to your horror of that detestable atrocity. But I am wrong in saying that the child who perished in the flames was not born. Its mother was delivered in the midst of the flames.

"Merciful God! Born in fire! Sent into the world in the midst of a furnace! transferred from the womb to the flames that raged around the agonies of an expiring mother! There are other mothers who hear me. This vast assembly contains women, doomed by the primeval malediction to the groans of childbirth, which cannot be suppressed on the bed of down, into which the rack of maternal agony still finds its way. But say, you who know it best, you who are of the same sex as Catherine Mullaly, what must have been the throes with which she brought forth her unfortunate offspring, and felt her infant consumed by the fires with which she was surrounded! We can but lift up our hands to the God of Justice, and ask him why has he invested us with the same forms as the demons who perpetrated that unexampled murder! And why did they commit it?—by virtue of a horrible league by which they were associated together, not only against their enemy, but against human nature and the God who made it;—for they were bound together—they were sworn in the name of their Creator, and they invoked Heaven to sanctify a deed which they were confederated to perpetrate by a sacrament of Hell.

"Although accompanied by circumstances of inferior terror, the recent assassination of Barry belongs to the same class of guilt. A body of men at the close of day enters a peaceful habitation, on the Sabbath, and regardless of the cry of a frantic woman, who, grasping one of the murderers, desired him 'to think of God, and of the blessed night and to spare the father of her eight children'—dragged him forth, and when he 'offered to give up the ground, tilled or untilled, if they gave him his life,' answered him with a yell of ferocious irony, and telling him 'he should have ground enough,' plunged their bayonets into his heart! An awful spectacle was presented on the trial of the wretched men who were convicted of the assassination. At one

extremity of the bar there stood a boy, with a blooming face and with down on his cheek, and at the other an old man in the close of life, with a wild haggard look, a deeply-furrowed countenance, and a head covered with hoary and dishevelled hair. In describing the frightful scene it is consoling to find that you share with me in the unqualified detestation which I have expressed; and, indeed, I am convinced that it is unnecessary to address to you any observation on the subject.

"But, my good friends, I must call your attention to another trial. I mean that of the Hogans, which affords a melancholy lesson. That trial was connected with the insane practice which exists among you, of avenging the accidental affronts offered to individuals, by enlisting whole clans in the quarrel and waging an actual war, which is carried on by sanguinary battles. I am very far from saying that the deaths which occur in these barbarous feuds are to be compared with the guilt of pre-concerted assassination, but that they are accompanied with deep criminality there can be no question; the system, too, which produces them, is as much marked with absurdity as it is deserving of condemnation. In this county, if a man chances to receive a blow, instead of going to a magistrate to swear informations, he lodges a complaint with his clan, which enters into a compact to avenge the insult—a reaction is produced, and an equally extensive confederacy is formed on the other side.

"All this results from an indisposition to resort to the law for protection; for amongst you it is a point of honour to avoid magistrates, and to reject all the legitimate means provided for your redress. The battle fought between the Hickeys and the Hogans, in which not less than five hundred men were engaged, presents in a strong light the consequences of this most strange and preposterous system. Some of the Hickey party were slain in the field, and four of the Hogans were tried for their murder; they were found guilty of manslaughter—three of them are married and have families, and from their wives and children are condemned to separate for ever. In my mind, these unhappy men have been doomed to a fate still more disastrous than those who have perished on the scaffold. In the calamity which has befallen Matthew Hogan every man in Court felt a sympathy. With the exception of his having made himself a party in the cause of his clan, he has always conducted himself with propriety. His landlord felt for him not only an interest, but a strong regard, and exerted himself to the utmost in his behalf. He never took a part in deeds of nocturnal villany. He does not bear the dagger and the torch; honest, industrious, and of a mild and kindly nature, he enjoyed the good will of every man who was acquainted with him. His circumstances in the world were not only comparatively good, but, when taken in reference to his condition in society, were almost opulent; and he rather resembled an English yeoman than an Irish peasant.

"His appearance at the bar was in a high degree moving and impressive—tall, athletic, and even noble in his stature, with a face finely formed, and wholly free from any ferocity of expression, he attracted every eye, and excited, even among his prosecutors, a feeling of commiseration. He formed a remarkable contrast with the ordinary class of culprits who are arraigned in our public tribunals. So far from having guilt and depravity stamped upon him, the prevailing character of his countenance was indicative of gentleness and humanity. This man was convicted of manslaughter; and when he heard the sentence of transportation for life, all colour fled from his cheeks, his lips became dry and ashy, his hand shook, and his eyes were the more painful to look at from their being incapable of tears.

"Most of you consider transportation a light evil, and so it is, to those who have no ties to fasten them to their country. I can well imagine that a deportation from this island, which for most of its inhabitants is a miserable one, is to many a change greatly for the better. Although it is, to a certain extent, painful to be torn from the place with which our first recollections are associated, and the Irish people have strong local attachments, and are fond of the place of their birth, and of their fathers' graves; yet the fine sky, the genial climate, and the deep and abundant soil of New Holland, afford many compensations. But there can be none for Matthew Hogan; he is in the prime of life, was a prosperous farmer; he has a young and amiable wife, who has borne him children; but, alas!

"Nor wife nor children more shall he behold,  
Nor friends, nor sacred home."

He must leave his country for ever—he must part from all that he loves, and from all by whom he is beloved, and his heart will burst in the separation. On Monday next he will see his family for the last time. What a victim do you behold, in that unfortunate man, of the spirit of turbulence which rages amongst you!

"Matthew Hogan will feel his misfortune with more deep intensity, because he is naturally a sensitive and susceptible man. He was proved to have saved the life of one of his antagonists in the very hottest fury of the combat, from motives of generous commiseration. One of his own kindred, in speaking to me of his fate, said, 'he would feel it the more because (to use the poor man's vernacular pronunciation) he was so *tinder*.' This unhappy sensibility will produce a more painful laceration of the heart than others would experience, when he bids his infants and their mother farewell for ever. The prison of this town will present on Monday next a very afflicting spectacle. Before he ascends the vehicle which is to convey him for transportation to Cork, he will be allowed to take leave of his family. His wife will cling with a breaking heart to his bosom; and while her arms are folded round his neck, while she sobs in the agony of a virtuous anguish on his breast, his children, who used to climb his knees in playful emulation



for his caresses,—his little orphans, for they are doomed to orphanage in their father's lifetime—

"I will not go on with this distressing picture; your own emotions (for there are many fathers and husbands here) will complete it. But the sufferings of poor Hogan will not end at the threshold of his prison; he will be conveyed, in a vessel freighted with affliction, across the ocean, and he will be set on the lonely and distant land, from which he will return no more. Others, who will have accompanied him, will soon forget their country, and devote themselves to those useful and active pursuits for which the colony affords a field, and which will render them happier, by making them better men. But the thoughts of home will still press upon the mind of Matthew Hogan, and adhere with a deadly tenacity to his heart. He will mope about, in the vacant heedlessness of deep and settled sorrow; he will have no incentive to exertion, for he will have bidden farewell to hope. The instruments of labour will hang idly in his hands; he will go through his task without a consciousness of what he is doing; or, if he thinks at all, while he turns up the earth, he will think of the little garden beside his native cottage, which it was more a delight than a toil to till. Thus his day will go by, and at its close his only consolation will be to stand on the sea-shore, and fixing his eyes in that direction in which he will have been taught that his country lies,—if not in the language, he will at least exclaim in the sentiments which have been so simply and so pathetically expressed in the Song of Exile:—

"Erin, my country! though sad and forsaken  
In dreams I revisit thy sea-beaten shore;  
But, alas! in a far foreign land I awaken,  
And sigh for the friends that can meet me no more,  
Where is my cabin door, fast by the wild wood?  
Sisters and sire, did you weep for its fall?  
Where is the mother that looked on my childhood?  
And where is the bosom-friend, dearer than all?"

## LAW OF ATTORNEYS AND SOLICITORS.

### DISCHARGE OF COMMON ORDER TO TAX, WHERE SUPPRESSION OF FACTS.

It appeared that Mr. Rudge being indebted to Mr. Holland, a solicitor, for costs, Mr. Holland agreed to advance 2,000*l.* on mortgage, and had made payments on account. He delivered his bill of costs on Nov. 28, 1853, and on Dec. 3, a meeting took place between them to settle, Mr. Rudge being accompanied by his solicitor. On that occasion Mr. Holland delivered his cash account, in which he had taken credit for the amount of his bill of costs, and on the whole a balance of 124*l.* appeared to be due from Mr. Holland to Mr. Rudge.

<sup>1</sup> "Campbell's 'Exile of Erin.'"

The parties met by adjournment on Dec. 5, when Mr. Rudge settled and signed the account, which included the item of the bill of costs, and subsequently on Jan. 9, Mr. Holland sent a cheque for the balance.

Mr. Rudge on April 12, 1854, obtained the common order to tax, omitting all mention of the above transaction.

On the motion to discharge the order, the *Master of the Rolls* said,—“I am of opinion that this is a case in which the common order ought not to have been obtained. I express no opinion whether this was a payment or not, though it has been held, that where an attorney and client meet together, and an account is taken between them, and the attorney retains the exact amount of his bill and pays over the balance to his client, it is a payment of the bill of costs. Here an account is produced, which the client has signed and allowed, in which the bill of costs is one of the items, I do not say that this excluded taxation, but it is a circumstance which requires consideration and ought to have been stated on the application for an *ex parte* order. Here the matter was settled, after the client had had three or four days to examine the account. Four months afterwards the client obtains the common order for taxation, without making any mention of the fact of his having perused the account and signed his name to it. If the balance had been paid over at the time, I should have considered it as a payment. Though that was not done, I think it is sufficient to say that there has been a suppression of material facts, and that the order must be discharged.” *In re Holland*, 19 Beav. 314.

## LAW OF COSTS.

### OF LESSOR ON REFORMING LEASE.

ON reforming a lease, the *Master of the Rolls* refused to give any costs to the plaintiff, the lessor, because the suit had been occasioned by his error in not having the lease properly prepared. *Murray v. Parker*, 19 Beav. 305.

### OF PAYMENT OF PURCHASE-MONEY INTO COURT BY RAILWAY COMPANY.

The owner of an estate by his will, dated in 1846, devised it to the uses of a settlement, and he afterwards in 1852, contracted for its sale to the Manchester and Southport Railway Company by virtue of their compulsory powers, and died in April, 1853, before the contract had been completed, and the conveyance exe-

cated. There being doubts whether the infant devisee or the executors were entitled to the purchase-money, the railway company paid it into Court: *Held*, that the company were bound to pay the costs of the infant devisee. *In re Manchester and Southport Railway Company*, 19 Beav. 365.

## ENFRANCHISEMENT OF COPYHOLDS.

### COVENANT TO PRODUCE.

YOUR Correspondent, R., in your last Number, has mistaken my question, which was intended to elicit an opinion whether the lord of a manor, who was a mere *tenant for life*, was compellable to enter into a covenant in a compulsory enfranchisement to produce his title-deeds. Such a covenant has been occasionally required from my client, the lord of a manor, and the question is, is he bound to enter into it?

The sections referred to by R. are so important that in future I shall feel it my duty to resist such a covenant.

AMICUS.

## LEGAL BREVITY IN THE OLDEN TIME.

LEGAL documents were formerly a simple narration of contract and fact, of which the following old Scottish Tack or Lease, proffers a good illustration. The original is still in the possession of a descendant of the John and James Low herein mentioned:—

“J david Lyndesay of Edzell Binds and oblidges me my airs exrs and successors qhomever that John Low and James Low in mickl Tullo shall peacablie possess and Bruick ther possession ther for the space of five years nixt to come they alwayes paying their yearlie duties oysr as formerlie usd and wondt in witt whereof J have subscribed this my obligatioun at Edzell the sixt day of Junn j<sup>m</sup>. vi<sup>o</sup>. nyntie six years. D. Lyndesay.

“Notta that within their taks j<sup>d</sup> one of them are to pay a wedder sheep.”

This lease is in the handwriting of the penultimate Lindsay of Edzell. The extensive lordship of Glenesk, of which Edzell forms a part, became part of the possessions of the ancient family of Lindsay, by the marriage of Catherine Stirling, co-heiress of Sir John Stirling, to Sir Alexander, third son of Sir David Lindsay of Crawford, in or about 1357. The Lindsays held these lands till 1714, when James, fourth Earl of Panmure, purchased them from David Lindsay, only son of the grantor of the above lease, for 192,502 pounds Scots, or in sterling money 16,042*l*. Soon after this purchase, through Panmure aiding the Chevalier de St. George, these lands were

forfeited, but were repurchased by his nephew William, ultimately the fifth Earl of Panmure, in 1764, for 11,951*l*. 8*s*. 9*d*. sterling, and now constitute a part of the extensive possessions of Lord Panmure, present Minister of War, whose united properties in Forfarshire are calculated to exceed one hundred thousand acres. —From *Willis's Current Notes*. —London, May, 1855.

## PUBLIC GENERAL ACTS.

18 & 19 VICT.

1. AN Act to enable her Majesty to accept the Services of the Militia out of the United Kingdom, for the vigorous Prosecution of the War.

2. An Act to permit Foreigners to be enlisted and to serve as Officers and Soldiers in her Majesty's Forces.

3. An Act to carry into effect a Treaty between her Majesty and the United States of America.

4. An Act to amend the Act for limiting the Time of Service in the Army.

5. An Act to apply the Sum of 3,300,000*l*. out of the Consolidated Fund to the Service of the year ending the 31st day of March, 1855.

6. An Act to apply the Sum of 20,000,000*l*. out of the Consolidated Fund to the Service of the year 1855.

7. An Act to extend to Ireland the Provisions of the 18th section of the Common Law Procedure Act, 1854.

8. An Act for raising the Sum of 17,183,000*l*. by Exchequer Bills for the Service of the year 1855.

9. An Act to suspend the Decline of the Customs Duties on Tea from and after the 5th day of April, 1855.

10. An Act to enable a Third Principal Secretary and a Third Under Secretary of State to sit in the House of Commons.

11. An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their quarters.

12. An Act for the Regulation of her Majesty's Royal Marine Forces while on shore.

13. An Act to explain and amend the Lunacy Regulation Act, 1853.

14. An Act to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales.

15. An Act for the better Protection of Purchasers against Judgments, Crown Debts, Cases of Lis pendens, and Life Annuities or Rent-charges.

16. An Act to authorise the letting Parts of the Royal Forests of Dean and Woolmer, and certain other Parts of the Hereditary Possessions of the Crown.

17. An Act to carry into effect a Convention between her Majesty and the King of Sar-dinia.

18. An Act for raising the Sum of 16,000,000*l*. by way of Annuities.

19. An Act to remove Doubts as to the Commissions of Officers of Militia in Ireland who have omitted to deliver unto the Clerk of the Peace Descriptions of their Qualifications, and to indemnify them against the Consequences of such Omission, and to amend the Law relating to the Militia in Ireland.

20. An Act for granting to her Majesty an increased Rate of Duty on Profits arising from Property, Professions, Trades, and Offices.

21. An Act for granting certain Duties of Customs on Tea, Coffee, Sugar, and other Articles.

22. An Act for granting certain additional Rates and Duties of Excise.

23. An Act to alter in certain respects the Law of Intestate Moveable Succession in Scotland.

24. An Act to amend an Act of the 2 & 3 Wm. 4, for amending the Representation of the People in Scotland, in so far as relates to the Procedure in County Elections in that Country.

25. An Act to allow Affirmations or Declarations to be made instead of Oaths in certain Cases in Scotland.

26. An Act to continue an Act of the 13 & 14 Vict., for enabling the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading.

27. An Act to amend the Laws relating to the Stamp Duties on Newspapers, and to provide for the Transmission by Post of printed periodical Publications.

28. An Act to provide that the Property or Income Tax payable in respect of the Income from Ecclesiastical Property in Ireland shall be a Deduction in estimating the Value of such property for the purpose of Taxation by the Ecclesiastical Commissioners.

29. An Act to make further provision for the Registration of Births, Deaths, and Marriages in Scotland.

30. An Act to empower the Commissioners of Sewers to expend on House Drainage a certain Sum out of the Moneys borrowed by them on Security of the Rates, and also to give to the said Commissioners certain other Powers for the same purpose.

31. An Act to confirm the Incorporation of the Borough of Brighton.

32. An Act to amend and extend the Jurisdiction of the Stannary Court.

33. An Act to prevent Doubts as to the Validity of certain Proceedings in the House of Commons.

34. An Act to provide for the Education of Children in the Receipt of Out-door Relief.

35. An Act to continue the Act for extending for a limited time the Provision for Abatement of Income Tax in respect of Insurance on Lives.

36. An Act to repeal the Stamp Duties payable on Matriculation and Degrees in the University of Oxford.

37. An Act to apply the Sum of Ten Millions out of the Consolidated Fund to the Service of the year 1855.

38. An Act to allow Spirit of Wine to be used Duty-free in the Arts and Manufactures of the United Kingdom.

39. An Act to facilitate Grants of Lands and Tenements for the purpose of Religious Worship and other purposes connected therewith.

40. An Act for further promoting the Establishment of free Public Libraries and Museums in Ireland.

41. An Act for abolishing the Jurisdiction of the Ecclesiastical Courts of England and Wales in Suits for Defamation.

42. An Act to enable British Diplomatic and Consular Agents Abroad to administer Oaths and do Notarial Acts.

43. An Act to enable Infants, with the Approbation of the Court of Chancery, to make binding Settlements of their Real and Personal Estate on Marriage.

44. An Act to amend an Act of last Session, to provide for the Establishment of a National Gallery of Paintings, Sculpture, and the Fine Arts, for the Care of a Public Library, and the Erection of a Public Museum, in Dublin.

45. An Act for further assimilating the Practice in the County Palatine of Lancaster to that of other Counties with respect to the Trial of Issues from the Superior Courts at Westminster.

46. An Act for disafforesting the Forest of Woolmer.

47. An Act to continue an Act of the 18 Vict., for charging the Maintenance of certain poor Persons in Unions in England and Wales upon the Common Fund.

48. An Act for the better Administration of Justice in the Cinque Ports.

49. An Act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those purposes respectively.

50. An Act to amend the Provisions of the Court of Exchequer (Ireland) Act, 1850.

51. An Act to continue the Exemption of Inhabitants from Liability to be rated as such in respect of Stock in Trade or other Property to the Relief of the Poor.

52. An Act to continue Appointments under the Act for consolidating the Copyhold and Inclosure Commissions, and for completing Proceedings under the Tithe Commutation Acts.

53. An Act to relieve the East India Company from the Obligation to maintain the College at Haileybury.

54. An Act to enable her Majesty to assent to a Bill, as amended, of the Legislature of New South Wales, "to confer a Constitution on New South Wales, and to grant a Civil List to her Majesty."

55. An Act to enable her Majesty to assent to a Bill, as amended, of the Legislature of Victoria, to establish a Constitution in and for the Colony of Victoria.

56. An Act to repeal the Acts of Parliament now in force respecting the Disposal of the

Waste Lands of the Crown in her Majesty's Australian Colonies, and to make other provision in lieu thereof.

57. An Act further to amend the Laws relating to the Militia in England.

58. An Act to better enable the Chancellor and Council of the Duchy of Lancaster to sell and purchase Land on behalf of her Majesty, her Heirs and Successors, in right of the said Duchy of Lancaster.

59. An Act to facilitate Inquiries of Commissioners of Endowed Schools in Ireland.

60. An Act for excepting Gold Wedding Rings from the Operation of the Act of the last Session relating to the Standard of Gold and Silver Wares, and from the Exemptions contained in other Acts relating to Gold Wares.

61. An Act to authorise the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners for England and Wales.

62. An Act to amend an Act of the 18 Vict., to amend the Laws for the better Prevention of the Sale of Spirits by unlicensed Persons and for the Suppression of illicit Distillation in Ireland.

63. An Act to consolidate and amend the Laws relating to Friendly Societies.

64. An Act to settle Annuities on Emily Harriet Lady Raglan and Richard Henry Fitzroy Lord Raglan, and the next surviving Heir Male of his Body, in consideration of the eminent Services of the late Field Marshal Lord Raglan.

65. An Act to amend the Dublin Carriage Acts.

66. An Act to render valid certain Marriages in Christ Church in the Chapelry of Todmorden and Parish of Rochdale in the Counties of Lancaster and York.

67. An Act to facilitate the Remedies on Bills of Exchange and Promissory Notes by the Prevention of frivolous or fictitious Defences to Actions thereon.

68. An Act to amend the Laws concerning the Burial of the Dead in Scotland.

69. An Act to discontinue the taking of Toll on the Turnpike Roads leading from the City of Dublin and on the Turnpike Road from Kinnegad to Athlone, and to provide for the Maintenance of such Roads as Public Roads, and for the Discharge of the Debts due thereon, and other purposes.

70. An Act for further promoting the Establishment of Free Public Libraries in Municipal Towns governed under Local Improvement Acts, and to Parishes.

71. An Act to authorise the Commissioners of the Treasury to make Arrangements concerning certain Loans advanced by way of Relief to the Islands of Antigua, Nevis, and Montserrat.

72. An Act for legalising and preserving the restored Standards of Weights and Measures.

73. An Act to extend the Period for applying for a Sale under the Acts for facilitating the

Sale and Transfer of Incumbered Estates in Ireland.

74. An Act to enable Grand Juries of Counties in Ireland to present for Payment of Expenses in certain Cases.

75. An Act to continue certain temporary Provisions concerning Ecclesiastical Jurisdiction in England.

76. An Act to continue an Act of the 5 & 6 Vict. for amending the Laws relative to Private Lunatic Asylums in Ireland.

77. An Act to give Effect to a Convention between her Majesty and the United States of America.

78. An Act to reduce certain Duties payable on Stage Carriages, and to amend the Laws relating to Stamp Duties, and to Bonds and Securities to the Inland Revenue.

79. An Act to amend the Law regarding the Burial of poor Persons by Guardians and Overseers of the Poor.

80. An Act to ratify conditional Agreements entered into by the Commissioners of her Majesty's Works and Public Buildings; and to vest in the said Commissioners certain Property situate near the College of Edinburgh in the City of Edinburgh, together with the General Register House in the said City, and all Lands held therewith; and to enable the said Commissioners to acquire certain Property near the Palace of Holyrood.

81. An Act to amend the Law concerning the certifying and registering of Places of Religious Worship in England.

82. An Act to abolish certain Payments charged on the Consolidated Fund in favour of the Provost and Fellows of Trinity College, Dublin, and of certain Professors in the said College; and to repeal the Stamp Duties payable on Matriculations and Degrees in the University of Dublin.

83. An Act to continue certain Acts for regulating Turnpike Roads in Ireland.

84. An Act to provide for the Performance of certain Duties of the Speaker during his temporary Absence from the House of Commons.

85. An Act for carrying into effect the Engagements between her Majesty and certain Chiefs of the Sherbro Country near Sierra Leone in Africa, for the more effectual Suppression of the Slave Trade.

86. An Act for securing the Liberty of Religious Worship.

87. An Act to amend the Act for the better Care and Reformation of Youthful Offenders, and the Act to render Reformatory and Industrial Schools in Scotland more available for the Benefit of Vagrant Children.

88. An Act to facilitate the Erection of Dwelling Houses for the Working Classes in Scotland.

89. An Act to amend the Provisions of the Huddersfield Burial Ground Act, 1852.

90. An Act for the Payment of Costs in Proceedings instituted on behalf of the Crown in Matters relating to the Revenue, and for the

Amendment of the Procedure and Practice in Crown Suits in the Court of Exchequer.

91. An Act to facilitate the Erection and Maintenance of Colonial Lighthouses, and otherwise to amend the Merchant Shipping Act, 1854.

92. An Act for appropriating the Corps of the Prebend or Portion of Netherall Ledbury in the Diocese and County of Hereford, and for constituting the Living of Ledbury a Rectory with Cure of Souls, and for augmenting the Endowments thereof.

93. An Act to amend certain Acts relating to the Court of Judicature of Prince of Wales Island, Singapore, and Malacca, and to the Supreme Courts of Judicature in India.

94. An Act to impose increased Rates of Duty of Excise on Spirits distilled in the United Kingdom; to allow Malt, Sugar, and Molasses to be used Duty-free in the distilling of Spirits in lieu of Allowances and Drawbacks on such Spirits, Sugar, and Molasses respectively; and to amend the Laws relating to the Duties of Excise.

95. An Act to enable the Commissioners of her Majesty's Works and Public Buildings to provide additional Offices for the Public Service in or near Downing Street, Westminster.

96. An Act to consolidate certain Acts, and otherwise amend the Laws of the Customs, and an Act to regulate the Office of the Receipt of her Majesty's Exchequer at Westminster.

97. An Act for the Amendment and Consolidation of the Customs Tariff Acts.

98. An Act to continue certain Turnpike Acts in Great Britain.

99. An Act to enable her Majesty to carry into effect a Convention made between her Majesty, his Majesty the Emperor of the French, and his Imperial Majesty the Sultan.

100. An Act to amend the Law concerning the Qualification of Officers of the Militia.

101. An Act for the more effectual Execution of the Convention between her Majesty and the French Government concerning the Fisheries in the Seas between the British Islands and France.

102. An Act to confirm certain Provisional Orders made under an Act of the 15 Vict., to facilitate Arrangements for the Relief of Turnpike Trusts.

103. An Act to amend an Act of the last Session of Parliament relating to the Sale of Spirits by unlicensed Persons and illicit Distillation in Ireland; and also to repeal so much of an Act of the 3 & 4 Wm. 4, as requires Persons applying for Licences for the Sale of Beer, Cider, or Spirits by Retail in Ireland to enter into a Bond with Sureties.

104. An Act for the Regulation of Chinese Passenger Ships.

105. An Act to amend the Lunatic Asylums Act, 1853, and the Acts passed in the 9 and 17 Vict., for the Regulation of the Care and Treatment of Lunatics.

106. An Act to suspend the making of Lists

and the Ballots for the Militia of the United Kingdom.

107. An Act to authorise the Commissioners of the Treasury to make arrangements concerning a certain Loan advanced by way of Relief to the Island of Tobago.

108. An Act to amend the Law for the Inspection of Coal Mines in Great Britain.

109. An Act to make further Provisions for the Repayment of Advances out of the Consolidated Fund for the Erection and Enlargement of Asylums for the Lunatic Poor in Ireland, and to amend the Laws with reference to the Repayments in case of Change of Districts, and the Appointment of Commissioners of General Control and Correspondence.

110. An Act to authorise the Application of certain Sums granted by Parliament for Drainage and other Works of public Utility in Ireland towards the Completion of certain Navigations undertaken in connexion with Drainages, and to amend the Acts for promoting the Drainage of Lands and Improvements in connexion therewith in Ireland.

111. An Act to amend the Law relating to Bills of Lading.

112. An Act to continue an Act of the 11 Vict., for the better Prevention of Crime and Outrage in certain Parts of Ireland.

113. An Act to extend the Provisions of an Act of the 14 & 15 Vict., for rebuilding the Bridge over the River Ness at Inverness.

114. An Act for the Transfer of Licences of Public Houses in Ireland.

115. An Act to continue and amend the Public Health Act (1854).

116. An Act for the better Prevention of Diseases.

117. An Act for transferring to one of her Majesty's Principal Secretaries of State the Powers and Estates vested in the Principal Officers of the Ordnance.

118. An Act to repeal the Act of the 17 & 18 Vict. for further regulating the Sale of Beer and other Liquors on the Lord's Day, and to substitute other provisions in lieu thereof.

119. An Act to amend the Law relating to the Carriage of Passengers by Sea.

120. An Act for the better Local Management of the Metropolis.

121. An Act to consolidate and amend the Nuisances Removal and Diseases Prevention Acts, 1848 and 1849.

122. An Act to amend the Laws relating to the Construction of Buildings in the Metropolis and its neighbourhood.

123. An Act to defray the Charge of the Pay, Clothing, and contingent and other expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, Surgeons' Mates, and Sergeant Majors of the Militia; and to authorise the Employment of the Non-commissioned Officers.

124. An Act to amend the Charitable Trusts Act, 1853.

125. An Act to confirm Provisional Orders of the General Board of Health, applying the Public Health Act (1848) to the Districts of Middlesbrough, Windhill, Christchurch, Keighley, Tunstall, and Toxteth Park, and for Alteration of the Boundaries of the District of Romford.

126. An Act for diminishing Expense and Delay in the Administration of Criminal Justice in certain cases.

127. An Act to make better Provision for the Union of contiguous Benefices, and to facilitate the building and endowment of new Churches in spiritually destitute Districts.

128. An Act further to amend the Laws concerning the Burial of the Dead in England.

129. An Act to apply a Sum out of the Consolidated Fund and the Surplus of Ways and Means to the Service of the Year 1855, and to appropriate the Supplies granted in this Session of Parliament.

130. An Act for raising the Sum of Seven Millions by Exchequer Bills and Exchequer Bonds, for the Service of the Year 1855.

131. An Act to render more secure the Conditions upon which money is advanced out of the Parliamentary Grant for the Purposes of Education.

132. An Act for facilitating the Erection of Dwelling Houses for the Labouring Classes.

133. An Act for limiting the Liability of Members of certain Joint-Stock Companies.

134. An Act to make further Provision for the more speedy and efficient Despatch of Business in the High Court of Chancery, and to vest in the Lord Chancellor the Ground and Buildings of the said Court situate in Southampton Buildings, Chancery Lane, with Powers of leasing and Sale thereof.

## LEGAL CHRONOLOGY.

### ANCIENT LAWS.

The laws of Phoroneus, in the kingdom of Argos, 1807 B.C., were the first Attic laws reduced to a system by Draco, for the Athenians, 623 B.C., but the latter code was afterwards superseded by that of Solon, 578 B.C. The Spartan laws of Lycurgus were made 844 B.C.; they remained in full force for 700 years, and are calculated to raise our admiration, as well by their singularity, as by the effect they had in forming a race of men totally different from all others living in civilized society. The

Roman laws were founded on those of Phoroneus. The Gregorian and Hermoginian codes were published in A.D. 290; the Theodosian code in 435; the Justinian code in 529; and the Digest in 533. Civil law was restored in Italy, Germany, &c., in 1127; introduced into England by Theobald, a Norman Abbot, in 1138. It is now used in the Spiritual Courts only and in maritime affairs.—*Haydn's Dictionary of Dates.*

### BRITISH LAWS.

The British laws of earliest date were translated into the Saxon, in A.D. 590. The Saxon laws of Ina were published in 709. Alfred's code of laws, which is the foundation of the common law of England, was compiled in 887, but in use previously. Edward the Confessor promulgated his laws in 1065. Stephen's charter of general liberties, 1136; Henry II.'s confirmation of it, 1154 and 1175. The maritime laws of Richard I., 1194. Magna Charta, by King John, 1215; Its confirmation by Henry III., 1216.—*Ibid.*

## COMPULSORY ENFRANCHISEMENT OF COPYHOLDS.

### EXPENSE OF REFERENCE.

THE Compulsory Enfranchisement Act enacts, that, in case of disagreement, it shall be referred to an *umpire* nominated by the Commissioners, whose charges they are to moderate; but the very important question arises, by whom the expenses of surveyors and other witnesses produced by either party before the umpire is to be borne?

Surely it could not have been intended to leave it *entirely* and *exclusively* to the umpire—almost prohibiting him, except at an enormous individual expense, from receiving any evidence of competent persons; for such would be the evident result if each party are to pay their own costs. In the event of the umpire refusing to receive evidence, would his award be valid?

Sept. 17, 1855.

A SOLICITOR.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)

*Tench v. Cheese.* June 27, 1855.

WILL.—CONSTRUCTION.—DEVISE OF REAL

AND PERSONAL ESTATE.—PAYMENT OF ANNUITY. — PERSONALTY PRIMARILY CHARGEABLE.

Held, that a devise by a testator of real and personal estate to trustees upon trust to

*pay an annuity out of the rents, issues, interest, dividends, and profits does not operate so as to relieve the personal estate from being primarily chargeable.*

THE testator, by his will, devised and bequeathed all his real and personal estate upon trust out of the rents, issues, and profits, dividends, interest, and income to raise and pay to his wife 1,000*l.* per annum so long as she should continue his widow, and out of the same rents and profits, dividends, interest, and income to pay an annuity of 100*l.* to the person therein named; and, subject thereto, to stand possessed of his real and personal estate upon trust to raise 4,000*l.* for his younger children, and he gave the rest, residue, and remainder of his real and personal estate to his eldest son and daughter. The testator then directed that in case there should be no such child living at his death, as to the whole of his said real and personal estate upon trust to pay Maria P. Sherburne 200*l.* per annum, which was to be increased to 500*l.* on the happening of an event which had taken place. The question now arose, whether this annuity was payable out of the real and personal estate rateably, or whether the personality was not to be exhausted in the first instance.

*Elmley* for the widow's personal representative, contended it was payable rateably.

The Court, *dubitante* Lord Justice Bruce (without calling on *Follett*, *contra*), said, that there was no difference between *Boughton v. Boughton*, 1 H. of L. Cas. 406, and the present case, and that there the devise of the real and personal estate on trust to pay the annuity out of the rents, issues, interest, dividends, and profits did not operate so as to relieve the personal estate from being primarily chargeable. The rule was a convenient one, as the personality was more readily available for charges than real estate.

#### Vice-Chancellor Stuart.

*Smith v. Lakeman.* July 26, 1855.

#### EXAMINATION OF WITNESSES BEFORE SPECIAL EXAMINER.—DISCREDITING EVIDENCE OF DEFENDANT.

*Held, that on the examination of witnesses before a special examiner, the evidence of the defendant who had been called as a witness, cannot be discredited by other evidence, as in the case of an ordinary witness, but that the remedy against him was an indictment for perjury.*

THIS was a motion for an order on the special examiner in this suit to take the evidence of witnesses for the purpose of discrediting the evidence of the defendant who had been called as a witness.

*Nichols* for the plaintiff in support; *Dickinson*, *contra*.

The Vice-Chancellor said, that there was no analogy between seeking to discredit the evi-

dence of an ordinary witness and of a defendant who was examined, but that the remedy against such defendant was by indictment for perjury. The motion would therefore be refused with costs.

#### Vice-Chancellor Haughton.

*In re Hinchcliffe.* June 27, 1855.

#### RAILWAY COMPANY.—TAXATION OF OWNER'S BILLS OF COSTS.—WHERE TWO SOLICITORS EMPLOYED.

*A railway company being about to take under their compulsory powers part of a manufactory, the owner proceeded to restrain them by injunction from taking the same without the remainder, and he instructed two solicitors in order to proceed more expeditiously. The company afterwards agreed to an arrangement which included the payment of the costs of both solicitors. The bills were delivered and separate orders obtained for their taxation, under which the Master allowed all such costs as the owner was himself liable to pay, taxing the bills also without reference to each other: Held, that the Master was right in allowing all such costs as the owner was liable to pay, but that as one bill contained some items which were also charged in the other, regard should be had to both bills.*

THIS was a petition on behalf of the Oxford, Worcester, and Wolverhampton Railway Company to review the taxation of two bills of costs, which were incurred by the owner of a manufactory, which it appeared they were about to take under their compulsory powers for the purposes of their railway. The owner thereupon proceeded to restrain their taking part without the remainder, and accordingly instructed two solicitors in the steps rendered necessary, for the purpose of proceeding more expeditiously. An injunction had been obtained, but ultimately an agreement was entered into, part of the terms of which was the payment of the bills of costs of both the solicitors employed by the owner. The bills were delivered, and separate orders for their taxation obtained, under which the Taxing Master allowed all such costs as the owner would himself have been liable to pay. He also taxed each bill without reference to the other, although it appeared that in some instances the same items were charged in both bills.

*Rolt* and *W. Bovill* in support; *Willcock* and *De Gex*, *contra*.

The Vice-Chancellor said, that the Master had properly taxed the bill as if the owner had applied for taxation, but that he ought to have had regard to the fact of the same items being in some instances charged in the bill of both solicitors, which would have been a mode of taxation the owner himself would have been entitled to have pursued, and in this respect, therefore, the taxation must be reviewed.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL.

—"Still attorneyed at your service."—*Shakespeare.*

SATURDAY, SEPTEMBER 29, 1855.

### THE COMMON LAW ACTS, 1855.

1. CINQUE PORTS JURISDICTION.—2. COUNTY PALATINE TRIALS.—3. COSTS IN CROWN SUITS.—4. COMMON LAW PLEADINGS.—5. ADMINISTRATION OF OATHS ABROAD.

We propose to give a brief Commentary on this class of the Statutes, passed in the last Session of Parliament, of which verbatim copies have been already submitted to our readers.

#### 1. THE CINQUE PORTS JURISDICTION ACT.<sup>1</sup>

1. The Act 18 & 19 Vict. c. 48, recites, that it would conduce to the better Administration of Justice in the Cinque Ports if the jurisdiction and authority of the Lord Warden of the Cinque Ports and Constable of Dover Castle, in relation to Civil Suits and Proceedings were abolished. The preamble also states, that it is expedient that the parishes and places of St. John the Baptist (called *Margate*), St. Peter the Apostle *Birchington*, *Acol*, otherwise the *Ville of Wood*, *Beakesbourne*, and *Grange* otherwise *Grench*, which are Liberties of *Dover* or some other of the Cinque Ports, should be severed therefrom.

*Abolition of local Jurisdiction and transfer to Superior Courts.*—From the 30th September, 1855, the jurisdiction and authority of the Lord Warden in the administration of justice in actions, suits, or other civil proceedings at law or in equity, or the execution of judgments, writs, and process therein shall cease (s. 1). After that day, writs and proceedings shall be di-

rected and obeyed, and the jurisdiction of her Majesty's Courts of Common Law and Equity, and the Judges thereof shall extend and be exercised over the Cinque Ports, the towns of Winchelsea and Rye and their several liberties, in like manner as such writs, judgments, &c. are now directed, and executed in other places in England (s. 2).

*Parishes and Places incorporated with the County.*—Persons rated to the relief of the poor in the *Thanet* Division of Dover, comprising *Margate*, *Birchington*, *Acol*, *Beakesbourne* and *Grange*, may petition her Majesty, stating that the Justices of Kent have resolved that such parishes or any of them may belong to the county on payment of a sum to be mentioned in the resolution in respect of the expenditure for gaols, houses of correction, &c. And thereupon her Majesty may order such parishes to be part of the County (s. 3).

*County Rates.*—The Justices of Kent are then empowered to levy county rates in the parishes so severed from Dover (s. 4). The Acts 51 Geo. 3, c. 36; 5 & 6 Wm. 4, c. 135; and section 11 and part of section 10 of 6 & 7 Wm. 4, c. 105, are repealed as to such places severed from Dover (s. 5). But the places so severed continue liable to the existing debt (s. 6).

*Dover Quarter Sessions.*—The Act is not to deprive the General or Quarter Sessions of Dover of jurisdiction in the case of any person who, before such order, may have been committed or holden to bail for trial at such sessions; but all proceedings in relation to such trial shall be continued; and all expenses incurred by the town or port of Dover (to be ascertained by the Recorder) shall be added to the amount raised by rates (s. 7).

x

<sup>1</sup> See the Act, page 238, ante.



*Compensations* are to be granted by the Lords of the Treasury to persons sustaining any loss of fees, emoluments, or advantages by the passing of this Act (s. 8).

*Prisoners* in the gaol in Dover Castle to be removed to the county gaol as soon as convenient without writ of habeas corpus (s. 9).

The Act is not to affect the jurisdiction of the Lord Warden, relating to the adjustment of salvage, or the rights in respect of flotsam, jetsam, and lagan (s. 10).

## 2. COUNTY PALATINE OF LANCASTER TRIALS.

By the Common Law Procedure Act, 1852, section 103, the Records of the Superior Courts of Common Law are to be brought to trial and disposed of in the Counties Palatine in the same manner as in other counties; but by the 27 Henry 8, c. 24, s. 5, it was provided that Justices of Assize of the County Palatine of Lancaster should be made by Commission under the King's usual *Seal of Lancaster*, and in pursuance thereof one *Chief Justice* and one other *Justice* (being Judges of the Superior Courts) have been from time to time constituted by grants in separate Letters Patent under the Lancaster Seal.

In order to assimilate the practice of the County Palatine of Lancaster to that of other counties, with respect to the trial of issues of the Superior Courts of Common Law at Westminster, it is now enacted by the 18 & 19 Vict. c. 45, that her Majesty may issue Commissions of Assize, under the Seal of the County Palatine of Lancaster, to the Judges appointed for the time being to the offices of Chief Justice and Justice of Common Pleas in the County Palatine of Lancaster and to *such* of her Majesty's *Counsel, Serjeants, and Barristers-at-Law*, as have Patents of Precedence or *Precedence within the Bar of the County Palatine of Lancaster*, and other Serjeants to be from time to time selected,—authorising them to take the Assizes, juries, and certificates, before whatever justices arraigned, in the County of Lancaster, in like manner as such Commissions are issued into other counties.

Provided that nothing herein contained shall deprive the Chief Justice or Justice so ordained, of authority to try issues from the Superior Courts at Westminster and other issues in the County Palatine. It is also provided that the acting Prothonotary of the Common Pleas at Lancaster shall con-

tinue to officiate as Associate in the County Palatine as heretofore.<sup>2</sup>

## 3. COSTS IN CROWN SUITS.

In proceedings instituted on behalf of the Crown against the Queen's subjects, in respect of matters relating to *Revenue*, no costs are recovered by the Crown (except in certain cases) and no costs are paid by the Crown to the subject.

It is now enacted by the 18 & 19 Vict. c. 90, that in all informations, actions, suits, and legal proceedings hereafter instituted by the Crown, in respect of any lands, &c., or goods or chattels, the proceeds whereof are to be carried to the *Consolidated Fund*, or of any Act relating to the *Public Revenue*. Her Majesty's Attorney-General, or in Scotland the Lord Advocate, shall be entitled to recover costs where judgment shall be given for the Crown, in the same manner as between subject and subject, and such costs shall be paid into the Exchequer (s. 1).

If judgment be given against the Crown, the defendant shall be entitled to costs in like manner as between subject and subject, and the Commissioners of the Treasury are directed to pay such costs (s. 2).

The Act then recites, that the procedure and practice in Crown Suits are dilatory; and in order to assimilate the same as nearly as may be to the course of practice in actions and suits between subject and subject, the Barons of the Court of Exchequer, or any three of them, are authorised to make general rules and orders for the regulation of the pleading and practice of such suits, &c., to be laid before Parliament, and take effect three months therefrom (s. 3).

This Act, therefore, cannot come into operation until such rules and orders have been made and laid before Parliament for the time so prescribed. See the Act, p. 376, *ante*.

## 4. COMMON LAW PLEADINGS.

By the 13 & 14 Vict. c. 16, powers were given to the Judges of the Superior Courts of Common Law at Westminster, within five years from the passing of the Act, to make such alterations in the mode of pleading, &c., and entering and transcribing pleadings, judgments, and other proceedings in actions at law,—and in the time and manner of objecting to errors in pleadings and other proceedings,—and in the mode of verifying pleas and obtaining final judgment without trial in certain cases,—and such regulations

<sup>2</sup> See the Act *verbatim*, p. 241, *ante*.

as to the payment of costs and otherwise for carrying into effect the alterations, as to them may seem expedient.

These powers being about to expire, the present Act, 18 Vict. c. 26, continues them for five years from the passing of the Act on the 25th May, 1855. See the Act, p. 176, *ante*.

#### 5. ADMINISTRATION OF OATHS ABROAD.

By the 6 Geo. 4, c. 87, powers were given to British *Consuls-General* and *Consuls* to administer oaths and do notarial acts in the foreign places to which they are appointed.

By this Act, 18 & 19 Vict. c. 42, every British *Ambassador*, *Envoy*, *Minister*, *Chargé d'Affaires*, or *Secretary of Embassy* or *Legation*, exercising his functions in any foreign country, and every British *Vice-Consul*, *Acting Consul*, *Pro-Consul*, or *Consular Agent* (as well as every *Consul-General* or *Consul*) exercising his functions in any foreign place, may administer any oath or take any affidavit or affirmation, and also perform any notarial act (s. 1).

Affidavits and affirmations so taken shall be received and used in any Court of Law or Equity or other Judicature in like manner and be of the same force and effect as affidavits and affirmations taken before any Court or by any person duly commissioned by such Court, and be filed and dealt with accordingly (s. 2).

Such documents are to be admitted in evidence without proof of the seal or signature of the ambassador, envoy, or other official person (s. 3). Persons swearing or affirming falsely shall be deemed guilty of perjury (s. 4). And persons forging such seal or signature, or tendering the same in evidence, knowing it to be false or counterfeit, shall be deemed guilty of felony; and whenever such document has been admitted in evidence, the Court may direct the same to be impounded (s. 5). See the Act, p. 175, *ante*.

#### NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages:—

Purchasers' Protection, 18 Vict. c. 15,—p. 5.  
Lunacy Regulation Act, c. 13,—p. 32.  
Commons' Inclosure, c. 14,—p. 32.  
Newspaper Stamp Duties, c. 27,—p. 137.  
Sewers (House Drainage), c. 30,—p. 139.  
House of Commons' Proceedings, c. 33,—p. 139.

Income Tax, c. 20,—p. 197.

Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.

Administration of Oaths Abroad, 18 & 19 Vict. c. 42,—p. 175.

Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.

Common Law Pleadings, c. 26,—p. 176.

Infants' Marriage Settlements, c. 33,—p. 198.

Palatine of Lancaster Trials, c. 45,—p. 241.

Bills of Exchange and Promissory Notes, c. 67,—p. 256.

Cinque Ports, c. 48,—p. 258.

Commons Inclosure (No. 2), c. 61,—p. 275.

Incumbered Estates Acts (Ireland) Continuance, c. 73,—p. 276.

Places of Religious Worship Registration, c. 81,—p. 276.

Friendly Societies, c. 63,—pp. 296, 319, 342.

Limited Liability, c. 133,—p. 316.

Despatch of Business, Court of Chancery, c. 134,—p. 338.

Charitable Trusts, 1855, c. 124,—p. 358.

Crown Suits, c. 90,—p. 376.

Criminal Justice, c. 126,—p. 377.

Merchant Shipping Amendment Act, c. 91,—p. 395.

Bills of Lading, c. 111,—p. 398.

Youthful Offenders, c. 97,—p. 399.

Metropolitan Buildings' Act, 1855, c. 122,—p. 415.

#### METROPOLITAN BUILDINGS' ACT, 1855.

18 & 19 VICT. c. 122.

THIS Act "to amend the Laws relating to the Construction of Buildings in the Metropolis and its Neighbourhood," received the Royal Assent on the 14th August, 1855.<sup>1</sup>

1. The Act may be cited for all purposes as "The Metropolitan Building Act, 1855."

2. Except where otherwise provided, the Act will come into operation on the 1st Jan., 1856.

3. Interpretation of certain terms in the Act.

##### *Limits of Act.*

4. This Act shall extend to all places within the limits of the metropolis as defined by "An Act for the better local Management of the Metropolis, 18 & 19 Vict. c. 120," and to all other places to which such last-mentioned Act may be extended, unless such places are in making such extension expressly excepted from the operation of this Act; but nothing herein contained shall affect the exercise of any powers vested by any Act of Parliament in the Commissioners of Sewers of the City of London for the time being.

5. This Act shall be divided into Five Parts:—

The First Part relating to the Regulation and Supervision of Buildings:

<sup>1</sup> With an Analysis of the whole of this important Statute, are given more or less fully such sections as seem essential to be considered by our professional readers.

The Second Part relating to Dangerous Structures :

The Third Part relating to Party Structures :

The Fourth Part relating to Miscellaneous Provisions :

The Fifth Part relating to the Repeal of former Acts, and to temporary Provisions.

#### **PART I.—REGULATION AND SUPERVISION OF BUILDINGS.**

6. The following buildings and works shall be exempt from the operation of the first part of this Act:—

Bridges, piers, jetties, embankment walls, retaining walls, and wharf or quay walls :

Her Majesty's royal palaces, and any building in the possession of her Majesty, her heirs and successors, or employed for her Majesty's use or service :

Common gaols, prisons, houses of correction, and places of confinement under the inspection of the Inspectors of Prisons, and Bethlehem Hospital, and the House of Occupations adjoining :

The Mansion House, Guildhall, and Royal Exchange of the City of London :

The offices and buildings of the Governor and Company of the Bank of England already erected, and which now form the edifice called "The Bank of England," and any offices and buildings hereafter to be erected for the use of the said Governor and Company, either on the site of or in addition to and in connexion with the said edifice :

The buildings of the British Museum :

The Offices and buildings of the Honourable East India Company already erected, and any offices or buildings hereafter to be erected, for the use of the said company, on the site of or in addition to such existing offices and buildings :

Greenwich Hospital and the buildings in the parish of Greenwich vested in the Commissioners of Greenwich Hospital for the purposes of the said hospital :

All county lunatic asylums, sessions houses, and other public buildings belonging to or occupied by the justices of the peace of the county or city in which the same are situated :

The erections and buildings authorised by an Act passed in the 9 Geo. 4, for the purposes of a market in Covent Garden :

The cattle market, with its appurtenances, erected in pursuance of the Metropolitan Cattle Market Act, 1851 :

The buildings belonging to any canal, dock, or railway company, and used for the purposes of such canal, dock, or railway, under the provisions of any Act of Parliament :

All buildings, not exceeding in height 30 feet, as measured from the footings of the walls, and not exceeding in extent 125,000 cubic feet, and not being public buildings, wholly in one occupation, and distant at least eight feet from the nearest street or

alley, whether public or private, and at the least 30 feet from the nearest buildings and from the ground of any adjoining owner :

All buildings not exceeding in extent 216,000 cubic feet, and not being public buildings, and distant at least 30 feet from the nearest street or alley, whether public or private, and at the least 60 feet from the nearest buildings and from the ground of an adjoining owner :

All party fence walls and greenhouses so far as regards the necessary woodwork of the sashes, doors, and frames :

Openings made into walls or flues for the purpose of inserting therein ventilating valves of a superficial extent not greater than 40 square inches, if such valves are not nearer than 12 inches to any timber or other combustible material :

7. With the exceptions hereinbefore-mentioned, this Act shall apply to all new buildings; and whenever mention is herein made of any building, it shall, unless the contrary appears from the context, be deemed to imply a new building.

8. A building shall be deemed to be new whenever the enclosing walls thereof have not been carried higher than the footings previously to the said 1st day of January, 1856: Any other building shall be deemed to be an old building.

9. Any alteration, addition, or other work made or done for any purpose, except that of necessary repair not affecting the construction of any external or party wall, in, to, or upon any old building, or in, to, or upon any new building after the roof has been covered in, shall, to the extent of such alteration, addition, or work, be subject to the regulations of this Act; and whenever mention is hereinafter made of any alteration, addition, or work in, to, or upon any building, it shall, unless the contrary appears from the context, be deemed to imply an alteration, addition, or work to which this Act applies.

10. Whenever any old building has been taken down to an extent exceeding one-half of such building, such half to be measured in cubic feet, the rebuilding thereof shall be deemed to be the erection of a new building; and every portion of such old building that is not in conformity with the regulations of this Act shall be forthwith taken down.

11. Whenever any old buildings are separated by timber or other partitions not in conformity with this Act, then, if such partitions are removed to the extent of one-half thereof, such buildings shall as respects the separation thereof be deemed to be new buildings, and be forthwith divided from each other in the manner directed by this Act.

12. Walls shall be constructed of such substances and of such thickness and in such manner as are mentioned in the first Schedule annexed hereto.

13. The following rules shall be observed with respect to *Recesses and Openings* in walls :

Recesses and openings may be made in external walls, provided,

1. That the backs of such recesses are not of less thickness than eight and a half inches; and,
2. That the area of such recesses and openings do not, taken together, exceed one-half of the whole area of the wall in which they are made:

Recesses may be made in party walls, provided that,

1. The backs of such recesses are not of less thickness than thirteen inches; and
2. That every recess so formed is arched over, and that the area of such recesses do not, taken altogether, exceed one-half of the whole area of the wall of the story in which they are made; and
3. That such recesses do not come within one foot of the inner face of the external walls;

But no opening shall be made in any party wall except in accordance with the rules of this Act:

The word area, as used in this section, shall mean the area of the vertical face, or elevation, of the wall, pier, or recess to which it refers.

14. As to timber in external walls.
15. Rules as to breassummers.
16. Height and thickness of parapets to external walls.
17. Height of party walls above roof.
18. As to chases in party walls.
19. As to construction of roofs.
20. Rules as to chimnies and flues.
21. Rules as to close fires and pipes for conveying vapour, &c.
22. Rules as to accesses and stairs in certain buildings.

23. The following rules shall be observed with respect to *habitable rooms* in any building; that is to say,

1. Every habitable room hereafter constructed in any building, except rooms in the roof thereof and cellars and underground rooms, shall be in every part at the least seven feet in height from the floor to the ceiling:
2. Every habitable room hereafter constructed in the roof of every building shall be at the least seven feet in height from the floor to the ceiling throughout not less than one half the area of such room:
3. Cellars and underground rooms shall be constructed in manner directed by the said Act for the better Local Management of the Metropolis:

And whosoever knowingly suffers any room that is not constructed in conformity with this section to be inhabited shall, in addition to any other liabilities he may be subject to under this Act, incur a penalty not exceeding 20s. for every day during which such room is inhabited: and any room in which any person passes the night shall be deemed to be inhabited within the meaning of this Act.

24. As to party arches over public ways.
25. As to arches under public ways.

26. The following rules shall be observed as to *Projections*:

1. Every coping, cornice, fascia, window dressing, portico, balcony, verandah, balustrade, and architectural projection or decoration whatsoever, and also the eaves or cornices to any overhanging roof, except the cornices and dressings to the window fronts of shops, and except the eaves and cornices to detached and semi-detached dwelling houses distant at least 15 feet from any other building, and from the ground of any adjoining owner, shall, unless the Metropolitan Board otherwise permit, be of brick, tile, stone, artificial stone, slate, cement, or other fire-proof material:
2. In streets or alleys of a less width than 30 feet, any shop front may project beyond the external wall of the building to which it belongs for five inches and no more, and any cornice of any such shop front may project thirteen inches and no more; and in any street or alley of a width greater than 30 feet, any shop front may project 10 inches and no more, and the cornice may project 18 inches from the external walls, but no more:
3. No part of the woodwork of any shop front shall be fixed nearer than four and a-half inches from the line of junction of any adjoining premises, unless a pier or corbel of stone, brick, or other fire-proof material, four and a-half inches wide at the least, is built or fixed next to such adjoining premises as high as such woodwork is fixed, and projects an inch at the least in front of the face thereof:
4. The roof, flat, or gutter of every building, and every balcony, verandah, shop front, or other projection, must be so arranged and constructed, and so supplied with gutters and pipes, as to prevent the water therefrom from dropping upon or running over any public way:
5. Except in so far as is permitted by this section in the case of shop fronts, and with the exception of water pipes and their appurtenances, copings, cornices, fascias, window dressings, and other like architectural decorations, no projection from any building shall extend beyond the general line of fronts in any street, except with the permission of the Metropolitan Board of Works hereinafter mentioned.

27. The following rules shall be observed as to the *Separation of Buildings and Limitation of their Areas*:

1. Every building shall be separated by external or party walls from any adjoining building:
2. Separate sets of chambers or rooms tenanted by different persons shall, if contained in a building exceeding 3,600 square feet in area, be deemed to be separate buildings, and be divided accord-

ingly, so far as they adjoin vertically by party walls, and so far as they adjoin horizontally by party arches or fire-proof floors :

3. If any building in one occupation is divided into two or more tenements, each having a separate entrance and staircase, or a separate entrance from without, every such tenement shall be deemed to be a separate building for the purposes of this Act :
4. Every warehouse, or other building used either wholly or in part for the purposes of trade or manufacture, containing more than 216,000 cubic feet, shall be divided by party walls in such manner that the contents of each division thereof shall not exceed the above-mentioned number of cubic feet.

28. The following rules shall be observed as to uniting buildings :

1. No buildings shall be united unless they are wholly in the same occupation :
2. No buildings shall be united, if when so united they will, considered as one building only, be in contravention of any of the provisions of this Act :
3. No opening shall be made in any party wall dividing buildings, which, if taken together, would contain more than 216,000 cubic feet, except under the following conditions :

Such opening shall not exceed in width seven feet or in height eight feet :

Such opening shall have the floor, jambs, and head formed of brick, stone, or iron, and be closed by two wrought iron doors, each one-fourth of an inch thick in the panel, at a distance from each other of the full thickness of the wall, fitted to rebated frames, without woodwork of any kind :

4. Whenever any buildings which have been united cease to be in the same occupation, any openings made in the party walls dividing the same shall be stopped up with brick or stone work of the full thickness of the wall itself, and properly bonded therewith.

29. Every building used or intended to be used as a dwelling house, unless all the rooms can be lighted and ventilated from a street or alley adjoining, shall have in the rear or on the side thereof an open space exclusively belonging thereto of the extent at least of 100 square feet.

30. Notwithstanding anything herein contained, every public building, including the walls, roofs, floors, galleries, and staircases, shall be constructed in such manner as may be approved by the district surveyor, or, in the event of disagreement, may be determined by the Metropolitan Board ; and, save in so far as respects the rules of construction, every public building shall throughout this Act be deemed to be included in the term building, and be subject to all the provisions of this Act, in the

same manner as if it were a building erected for a purpose other than a public purpose.

#### *As to District Surveyors.*

31. Buildings to be supervised by district surveyors.

32. Power to Metropolitan Board of Works established under 18 & 19 Vict. c. 120.

33. The Institute of British Architects may from time to time cause to be examined, by such persons and in such manner as they think fit, all candidates presenting themselves for the purpose of being examined as to their competency to perform the duties of district surveyor, and shall grant certificates of competency to the candidates found deserving of the same ; and no person who has not already filled the office of district surveyor, or has not already obtained a certificate of competency in pursuance of the said Act of the 8 Vict. c. 84, shall be qualified to be appointed to that office, unless he has received a certificate of competency from the said Institute of British Architects, or has been examined in such other manner as the said Metropolitan Board may direct, and been found competent in such examination.

34. District surveyor to have and maintain an office.

35. District surveyor may appoint deputy with consent.

36. Assistant surveyor may be appointed on emergency.

37. District surveyor not to act in case of works under his professional superintendence.

#### *Notices to District Surveyors.*

38. Two days before the following acts or event, that is to say,

Two days before any building, or any work to, in, or upon any building, is commenced, and also, if the progress of any such building or work is after the commencement thereof suspended for any period exceeding three months, two days before such building or work is resumed, and also if during the progress of any such building or work the builder employed thereon is changed, then two days before any new builder enters upon the continuance of such building or work,

It shall be the duty of the builder engaged in building or rebuilding such building, or in executing such work, on in continuing such building or work, to give to the district surveyor notice in writing stating the situation, area, and height, and intended use of the building or buildings about to be commenced, or to, in, or upon which any work is to be done, and the number of such buildings if more than one, and also the particulars of any such proposed work, and stating also his own name and address, but any works to, in, or upon the same building that are in progress at the same time may be included in one notice.

39. District surveyor to cause rules of this Act to be observed.

40. Every notice given in pursuance of this Act shall be deemed, in any question relative

to any building or work, to be *prima facie* evidence as against such builder of the nature of the building or work proposed to be built or done.

41. Penalty of 20*l.* on builders neglecting to give notice.

42. District surveyor may enter and inspect buildings affected by this Act. Penalty for refusal.

43. District surveyor may enter buildings to ascertain as to exempted buildings.

44. In case of emergency, works may be commenced without notice.

*Proceedings by District Surveyors in case of Irregularity.*

45. In the following cases, that is to say,—

If in erecting any building or in doing any work to, in, or upon any building, anything is done contrary to any of the rules of this Act, or anything required by this Act is omitted to be done; or

In cases where due notice has not been given,—

If the district surveyor, on surveying or inspecting any building or work, finds that it is so far advanced that he cannot ascertain whether anything has been done contrary to the rules of this Act, or whether anything required by the rules of this Act has been omitted to be done;

In every such case the district surveyor shall give to the builder engaged in erecting such building, or in doing such work, notice in writing requiring such builder, within 48 hours from the date of such notice, to cause anything done contrary to the rules of this Act to be amended, or to do anything required to be done by this Act, but which has been omitted to be done, or to cause so much of any building or work as prevents such district surveyor from ascertaining whether anything has been done or omitted to be done as aforesaid to be to a sufficient extent cut into, laid open, or pulled down.

46. If the builder to whom such notice is given makes default in complying with the requisition thereof within such period of 48 hours, the district surveyor may cause complaint of such noncompliance to be made before a justice of the peace, and such justice shall thereupon issue a summons requiring the builder so in default to appear before him; and if upon his appearance, or in his absence, upon due proof of the service of such summons, it appears to such justice that the requisitions made by such notice or any of them are authorised by this Act, he shall make an order on such builder commanding him to comply with the requisitions of such notice, or any of such requisitions that may in his opinion be authorised by this Act, within a time to be named in such order.

47. Penalty of 20*l.* on noncompliance with order of justice.

48. Penalty of 50*s.* on workmen, &c., doing anything contrary to rules of Act.

49. Fees to district surveyors in respect of matters in first part of second Schedule.

50. Metropolitan Board may appoint special fees for services not provided for.

51. At the expiration of the following periods, that is to say,

Of one month after the roof of any building surveyed by any district surveyor under this Act has been covered in,

Of 14 days after the completion of any such work as is by this Act placed under the supervision of the district surveyor,

Of 14 days after any special service in respect of any building has been performed, the district surveyor shall be entitled to receive the amount of fees due to him from the builder employed in erecting such building, or in doing such work, or in doing any matter in respect of which any special service has been performed by the surveyor, or from the owner or occupier of the building so erected or in respect of which such work has been done or service performed; and if any such builder, owner, or occupier refuses to pay the same, such fees may be recovered in a summary manner before a justice of the peace, upon its being shown to the satisfaction of such justice that a proper bill specifying the amount of such fees was delivered to such builder, owner, or occupier, or sent to him in a registered letter addressed to his last known residence.

52. District surveyor to make monthly returns to Metropolitan Board of Works.

53. Return duly signed to be a certificate that works are agreeable to Act.

54. Superintending architect to audit accounts of fees charged by district surveyors, and to report in case of excess.

55. Power for Metropolitan Board of Works to modify rules.

56. Whenever any builder is desirous of erecting any iron building, or any other building to which the rules of this Act are inapplicable, he shall make an application to the Metropolitan Board of Works, stating such desire, and setting out a plan of the proposed building, with such particulars as to the construction thereof as may be required by the said Board; and the latter, if satisfied with such plan and particulars, shall signify their approval of the same, and thereupon such building may be constructed according to such plan and particulars; but it shall not be lawful for such board to authorise any warehouse or other building used either wholly or in part for the purposes of trade or manufacture to be erected of greater dimensions than 216,000 cubic feet, unless it is divided by party walls in manner hereinbefore required.

57. Power of Metropolitan Board to make general rules.

58. Approval of board how signified.

59. Board to issue forms of notices.

60. All expenses incurred in and about the obtaining such approval of the Metropolitan Board of Works as aforesaid shall be paid by the builder to the said superintending architect, or to such other person as the said board may

appoint, and in default of payment may be recovered in a summary manner.

61. District surveyor to see plans carried into execution.

62. Power to Metropolitan Board to appoint superintending architect and clerks.

63. Superintending architect may appoint deputy, with consent.

64. Salaries to architect and clerks.

65. Power of Metropolitan Board to pay salaries.

66. Moneys received by superintending architect to be paid to the Metropolitan Board.

67. Metropolitan Board may pay salaries out of rates.

68. All expenses of carrying into execution this Act, not hereby otherwise provided for, shall be deemed to be expenses incurred by the said Metropolitan Board in the execution of the said Act for the better local management of the metropolis, and shall be raised and paid accordingly.

[To be continued.]

## MERCANTILE LAW.

### SECOND REPORT OF THE COMMISSIONERS.

To the Queen's Most Excellent Majesty in her High Court of Chancery.

[Concluded from page 402.]

### VIII. LIMITATION AND PRESCRIPTION.

The Law of England and Ireland, and the Law of Scotland, on this subject, differ widely from each other; yet there is, perhaps, no branch of Mercantile Law in regard to which uniformity is more desirable; for the conflict which exists gives rise to this special mischief, namely, that as prescription or limitation is a plea belonging to the remedy, and governed by the *lex fori*, a debtor, by removing from the jurisdiction to which he was subject at the time of the contract, has the power materially to prejudice the rights of his creditors.

Both in England and Ireland, and in Scotland, the law is founded on and regulated by Statute, the principle of the Common Law being the same in all the countries, that a right never dies, and, consequently, that length of time is no bar to proceedings for making it effectual.

#### Period of Limitation of Prescription. Mercantile Transactions generally.

The period of limitation in England and Ireland applicable to simple contract debts is six years, and to debts on specialty 20 years, from the time the cause of action or suit accrues. If this period is suffered to expire, all remedy by action or suit to enforce payment ceases, but the debt is not extinguished.

#### (England) Simple Contract.

The 21 James 1, c. 16, s. 3 (England), enacts, "That all actions of trespass *quare clausum fregit*, all actions of trespass, detinue, action sur trover, and replevin for taking away of goods and cattle, all actions of account, and upon the

case, other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract, *without specialty*; all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued or brought at any time after the end of this present Session of Parliament, shall be commenced and sued within the time and limitation hereafter expressed, and not after (that is to say), the said actions upon the case (other than for slander), and the said actions for account, and the said actions for trespass, debt, detinue, and replevin for goods or cattle, and the said action of trespass *quare clausum fregit*, within three years next after the end of this present Session of Parliament, or within six years next after the cause of such actions or suit, and not after." By the English Act 4 Anne, c. 16, s. 17, it is enacted, that "all suits and actions in the Court of Admiralty for seamen's wages which shall become due after the said first day of Trinity Term shall be commenced and sued within six years next after the cause of such suits and actions shall accrue, and not after."

#### Specialty.

The 3rd section of 3 & 4 Wm. 4, c. 42, enacts, that all actions of debt for rent upon any indenture of demise, or covenant, or debt upon any bond or other specialty, and all actions of debt or *scire facias* upon any recognisance, shall be commenced and sued within 20 years after the cause of such actions or suits shall accrue, but not after.

This section provides that all actions of debt upon any award where the submission is not by specialty, or for any fine due in respect of any copyhold estate, or for an escape, or for money levied on any *scire facias*, shall be commenced and sued within six years after the cause of such actions or suits shall accrue, and not after.

It is not necessary to advert to the various Statutes which have been passed for Ireland on this subject, as they have all been consolidated in the recent "Act to amend the Procedure in the Superior Courts of Common Law in Ireland," 16 & 17 Vict. c. 113. The 20th section of that Act incorporates in substance the above-mentioned provisions of the 21 James 1, c. 16, and 3 & 4 Wm. 4, c. 42, s. 3.

#### (Scotland) Long Prescription.

Prescription was first introduced into the Law of Scotland by the Act 1469, c. 28, which adopted the *prescriptio longissimi temporis* of the Roman Law. The Act is in the following terms:—"Item, as anent obligations, that sall be followed in time cumming, except them that are depend and in law before the making of this Act, it is advised that the partie to quhome the obligation is maid, that has interest therein, sall follow the said obligation within the space of fourtie zeiris, and take document thereupon; and gif he does not, it shall be prescribed, and

of nain avail the said fourtie zeiris beand runnin and unpersewed be the partie."

Another Act was passed 1474, c. 54, explanatory of the former:—"Item, anentie the acte maid of before of prescription of obligations: It is ordained to be understandin in this wise; that all auld obligations maid of before, that is elder then the date of fourtie zeiris, not dependant in law in the time of the making of the said actis, shall be prescribed, and of na strength; and in likewise in time to cum, all obligations maid, or to be maid, that beis not followed within fourtie zeiris, sall prescrive and be of nane avail."

These Acts have a very extensive operation. They apply generally to all personal obligations, and their effect is to extinguish the obligation or right. Besides this long prescription there are several shorter prescriptions applicable to mercantile claims, the effect of which generally is, not to extinguish the obligation, nor even to cut off the remedy by action, but merely to affect the legal presumption as to the subsistence of the debt, and to change the mode of proof; so that claims which might be proved by parol or other legal evidence within the years of prescription, can only be established after the years have expired, by the writing or oath on reference of the debtor.

#### *Triennial.*

1st. Triennial Prescription. By the Act 1579, c. 83, it is enacted, "That all actions of debt for house mails (rents), men's ordinaries, servants' fees, merchants' accounts, and other the like debts that are not founded upon written obligations, be pursued within three years; otherwise the creditor sall have nae action except he either prove by writ or by oath of his party."

#### *Quinquennial.*

2nd. Quinquennial Prescription. This prescription was introduced by the Act 1669, c. 9, by which it is, among other things, enacted, "That all bargains concerning moveables or sums of money, proveable by witnesses, shall only be proveable by writ or oath of party, if the same be not pursued for within five years after the making of the bargain."

#### *Sexennial.*

3rd. Sexennial Prescription. The Statute which introduced this prescription into the Law of Scotland is the 12 Geo. 3, c. 72, s. 37; whereby, on the preamble that "whereas the not limiting bills and promissory notes to a moderate endurance in that part of Great Britain called Scotland has been found by experience to be attended with great inconveniences, for remedy whereof" it is enacted, "That no bill of exchange or promissory note executed after the 15th day of May, 1772, shall be of force or effectual to produce any diligence or action, in that part of Great Britain called Scotland, unless such diligence shall be raised and executed, or action commenced thereon, within the space of six years from and after the terms at which the sums in

the said bills or notes become exigible." It will be observed, that while the preamble points to a limitation of the endurance of the bill, the enacting part proceeds on the same footing as the English Statute of Limitations; viz, by barring the remedy. But by a provision in a subsequent clause (39) it is made "lawful and competent at any time after the expiration of the said six years, in either of the cases before-mentioned, to prove the debts contained in the said bills and promissory notes, and that the same are resting owing, by the oaths or writs of of the debtor."

The effect of this provision, as expounded by the decision of the Courts in Scotland since the date of the Act, is to give to the sexennial prescription the same operation as the shorter prescriptions generally; i. e., to shift the onus probandi and to change the mode of proof.

#### *Vicennial.*

4th. Vicennial Prescription. By another clause in the Act 1669, c. 9, it is provided that "Holograph missive letters and holograph bonds, and subscriptions in account books without witnesses, not being pursued for within 20 years shall prescribe in all time thereafter, except the pursuer offer to prove by the defender's oath the verity of the said holograph bonds and letters and subscriptions in the account books." The effect of this provision is to cut off all evidence of the genuineness of the subscription, excepting the defender's oath on the pursuer's reference.

We are of opinion that one uniform period of six years should be introduced into Scotland as the term of prescription or limitation applicable to all mercantile transactions which at present would fall under any of these Acts.

We are also of opinion that this prescription should have the same operation as the limitation of the Law of England and Ireland to bar the remedy by action or suit after the lapse of the period of prescription.

#### *Period of Limitation or Prescription.—Running Accounts.*

With regard to running accounts, as well where all the items are on one side as where the accounts are mutual, prescription commences by the Law of Scotland from the date of the last item, provided the accounts are continuous, without the interval of three years between any two items; but according to the Law of England and Ireland, in all accounts, with the exception mentioned in 21 James 1, c. 16, s. 3 [England], and 16 & 17 Vict. c. 113, s. 20 [Ireland], of "such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants," the remedy is barred as to every item that is more than six years old. Items within six years do not operate to take the previous portion of the account out of the Statute.

We recommend the repeal of the exception as to merchants' accounts. According to the decisions of the Courts in England, the exception has become practically inoperative, being limited to cases where an action of account or



an action on the case for not accounting, would lie; and we are of opinion that the Law of England and Ireland, as so amended, should be extended to Scotland, so that in current accounts all items more than six years old should be deemed to be prescribed.

We think also that the rule of the English and Irish Law which enables a creditor, after the expiration of the period of limitation, to avail himself of any lien he may have on the property of the debtor, should be extended to Scotland.

The Law of England and Ireland differs materially from the Law of Scotland in regard to the manner in which claims may be taken out of the operation of the Statutes of Limitation or prescription. The rules on the subject have regard to three classes of cases:—

- 1st. Absence of the parties:
- 2nd. Disability by minority, coverture, imprisonment, or being *non compos mentis*:
- 3rd. Acknowledgment of the debt.

#### How barred:—Absence.

I. *Absence*.—In Scotland prescription does not run against a creditor who is *non valens agere cum effectu*; but this *non valentia* is not inferred from the mere absence either of the creditor or of the debtor from the kingdom; though it has been doubted whether compulsory absence of the creditor, as by banishment or imprisonment abroad, should not be considered a *non valentia agendi*.

In England and Ireland this matter is regulated by Statute. The 7th section of 21 James 1, c. 16 [England], provides that if any person or persons that is or shall be entitled to any of the causes of action enumerated be, at the time of any of such cause of action accrued, beyond the seas, that then such person or persons shall be at liberty to bring the same actions within the period of limitation after their return from beyond seas.

The exception in favour of *creditors* beyond seas in the 21 James 1, c. 16, was, by the English Act 4 Anne, c. 16, s. 19, extended to cases where the *debtors* were beyond seas. By that section it is enacted, that if any person against whom any of the causes of action enumerated in the third section of the Statute of James, lie, "be or shall be at the time of any such cause of suit or action given or accrued, fallen or come, beyond the seas, that then such person or persons who is or shall be entitled to any such suit or action, shall be at liberty to bring the said actions against such person and persons after their return from beyond the seas, so as they take the same after their return from beyond the seas within such times as are respectively limited for bringing of the said actions before this Act, and by the said other Act 21 James 1, c. 16."

Similar provisions are contained in the 4th section of the 3 & 4 Wm. 4, c. 42; and inasmuch as it had been held by the English Courts that Ireland was to be deemed to be a place beyond seas, but that Scotland was not, to remedy the inconvenience of this distinction, it

was enacted by 3 & 4 Wm. 4, c. 42, s. 7, "that no part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney, and Sark, nor any islands adjacent to any of them, being part of the dominions of his Majesty, shall be deemed to be beyond the seas within the meaning of this Act or the Act 21 James 1, c. 16." But as the Act of 4 Anne, c. 16, is not mentioned, Ireland is still considered to be a place beyond the seas, within the meaning of the 4 Anne, c. 16. And this anomaly exists, viz., that Ireland is beyond seas when the question relates to the residence of the *debtor*, but it is not beyond seas when the *creditor's* residence is in question.

By the 22nd section of the 16 & 17 Vict. c. 113 (Ireland), it is enacted, that if a creditor is beyond seas, at the time the cause of action accrues, the period of limitation shall commence to run from the time of his return; and if the debtor is beyond seas at the like time, the creditor shall be at liberty to bring his action against him within the period of limitation after the return of the debtor from beyond the seas.

Absence from the realm of one of several joint creditors does not, by the Law of England and Ireland, prevent the period of limitation from commencing; but the absence of one of several joint debtors does.

In the matter of absence from the realm, we are of opinion that the Law of the United Kingdom should be placed on the following footing:—

1st. That the absence of a sole creditor, or of any, or any one, of several joint creditors from the United Kingdom, Isle of Man, and the Channel Islands, should not prevent the commencement or interrupt the currency of the period of limitation.

2nd. That when any debtor, whether sole or joint, is within any part of the United Kingdom, Isle of Man, or Channel Islands, the period of limitation should commence and run as to him.

3rd. That when any debtor, whether sole or joint, is out of the United Kingdom, Isle of Man, and the Channel Islands, when the right to sue accrues, the period of limitation should not commence as to him until his return.

4th. That any judgment recovered against his co-debtors should not be a bar to an action against the absent debtor when he returns to the realm.

#### How barred.—Disability.—Minority.

II. *Disability*.—In England, by 21 James 1, c. 16, s. 7, and 3 & 4 Wm. 4, c. 42, s. 4, and in Ireland by 16 & 17 Vict. c. 113, s. 22, the period of limitation in the case of minors commences to run from their attaining majority. In Scotland minors are excepted from the operation of the long prescription, and of the quinquennial, sexennial, and vicennial prescriptions above referred to, but not from the triennial.

We recommend that the Law of Scotland and the Law of England and Ireland be assimilated, and that minors be protected against the operation of prescription in all cases, so that

it should not run against them during their minority. But this rule should not apply to minors engaged in trade as to debts contracted to or by them in the course of such trade. In regard to such debts, minors should be deemed to be under no disability.

#### *Coverture.*

In England and Ireland the period of limitation does not run against married women during coverture. In Scotland, on the other hand, coverture does not prevent prescription from running against married women in questions as to third parties.

We abstain from expressing any opinion as to the merits of these conflicting rules; for it appears to us that the subject is so much interwoven with the general Law of Husband and Wife that no alteration could be recommended on this difference, without considering the subject generally, and that matter is not before us.

#### *Imprisonment.*

In England the imprisonment of the creditor is not a disability in regard to actions of debt on specialties, or other actions of debt governed by the 3rd section of the 3 & 4 Wm. 4, c. 42; but in regard to all other simple contract debts, falling under the 7th section of Jac. 1, c. 16, where the creditor is imprisoned at the time the cause of action accrues, the period of limitation will run only from the time of his being set at large.

In Ireland imprisonment was a disability under the Irish Act of 10 Chas. 1, sess. 2, c. 6, s. 17, which introduced into Ireland the provisions of 21 Jac. 1, c. 16; but in the enumeration of disabilities in the 22nd section of 16 & 17 Vict. c. 113, imprisonment has been omitted.

In Scotland imprisonment is sufficient to infer the plea of *non valens agere*, and forms no bar to the currency of the period of prescription; although, where it has taken place abroad, it has been doubted whether the law is not otherwise.

We are of opinion that the law of the three countries ought to be assimilated in this respect, so that imprisonment of the creditor or of the debtor, in the United Kingdom, Isle of Man, or Channel Islands, should not be a bar to the running of the period of limitation or prescription. Whatever might be the policy which dictated the introduction of this disability into the Law of England and Ireland, we do not think that in modern times there is any reason for preserving it in such cases. The imprisonment of a party within the kingdom cannot be said to deprive him of the opportunity or means of communicating with his friends or advisers, or to present any material impediment to the vindication of his rights. But we are of opinion that if, at the time the cause of action accrues, the creditor is imprisoned beyond the above limits, it should be a disability, and that the period should commence running from the time of his being liberated.

#### *How barred.—Acknowledgment.—Writing.*

III. *Acknowledgment.*—By the 9 Geo. 4, c. 14, s. 1 (Lord Tenterden's Act), applicable to England and Ireland, it is enacted that, in actions of debt or upon the case grounded on any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take the case out of the Statute of Limitations, "unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby." This enactment is renewed for Ireland by the 24th section of 16 & 17 Vict. c. 113. The Statute gives no authority to an agent to make the acknowledgment. The writing must therefore be signed by the principal—"the party chargeable thereby." And such acknowledgment must be made to the creditor or his agent.

In Scotland a memorandum written by the debtor, though not signed by him, may in some cases be sufficient to bar prescription, and the writing of an agent duly authorised is deemed to be the principal's writing. Further, it is not indispensable that the acknowledgment should be made to the creditor or his agent.

We are of opinion that the laws of the three countries should be assimilated, not by the adoption of either law, but by an enactment for the United Kingdom to the effect that the acknowledgment of a debt by an agent duly authorised, although not authorised by writing, should have the same effect as the acknowledgment of the principal; that the acknowledgment should in all cases be in writing, and signed by the party, or by his agent duly authorised, and should be made to the creditor or his agent.

#### *How barred.—Acknowledgment.—Promise.*

It is a rule of law in England and Ireland that the writing, to have the effect of barring the limitation, must contain either a promise to pay the debt, or an acknowledgment from which such promise is to be inferred. If the writing be of this character it will revive the debt for a period of six years from the date of the writing, and that whether the writing was made within or after the original period of limitation.

In Scotland it is not essential that the acknowledgment should either expressly or by implication contain a promise to pay the debt. It is enough if it admits the constitution of the debt, and that it has not been paid or satisfied; but the acknowledgment is of no avail whatever if it be made within the original period of prescription, unless the writing is of such a nature as to be itself a voucher of debt.

We recommend that the English and Irish rule on both these points should be extended to Scotland. We think that the waiver of the exemption from liability by the lapse of time, conferred by Statute, should in all cases be so distinct as either to express or imply a promise to pay; and we see no good reason for holding

that the acknowledgment, if otherwise sufficient, should be of no avail if made before the prescription has run,—that it should be effectual if made the day after the period of prescription, but worthless if made the day before.

*How barred.—Acknowledgment or Payment by one of several co-contractors.*

Again: in England and Ireland an acknowledgment made by one co-contractor does not preserve the claim as against other co-contractors (9 Geo. 4, c. 14, s. 1, and 16 & 17 Vict. c. 113, s. 24); but part payment by one co-contractor keeps alive the claim against the others. In Scotland part payment has as little effect as an acknowledgment by one co-contractor or joint debtor, and does not keep alive the claim against the other contractors or debtors.

We recommend that the Law for the United Kingdom should be, that neither acknowledgment nor part payment of any claim by one or more of several joint debtors or co-contractors should operate so as to keep in force the claim against any of the other joint debtors or co-contractors.

*How barred.—Acknowledgment.—New Period.*

When limitation or prescription of a claim is barred by a written acknowledgment the consequence is very different in Scotland from what it is in England and Ireland. In England and Ireland the acknowledgment revives the debt, so that a new course of limitation of six years, or twenty years as the case may be, commences to run from the date of the acknowledgment. But in Scotland, as a general rule, the acknowledgment takes the case out of the shorter prescriptions altogether; and this is consistent with the principle on which the Acts are founded, viz., that they change the mode of proof. After a written acknowledgment, therefore, the debt, whether falling under the triennial or the quinquennial prescription, will endure for forty years, or for the period of prescription applicable to the document containing the acknowledgment, *e. g.*, if the document fall within the last clause of the Act 1669, c. 9 (*supra*, p. 22), the acknowledgment will endure for twenty years, and the mode of proof for the remainder of the forty years will be restricted to the debtor's oath on reference. An exception to the general rule, however occurs in the case of the sexennial prescription, it being held by the Scotch Courts, after much fluctuation of opinion, that an acknowledgment of a debt contained in a bill suffers the prescription of six years proper to the bill itself.

We are of opinion that the Law of Scotland should in this matter be assimilated to the Law of England and Ireland, so that the same prescription or limitation should be applicable to the acknowledgment of a debt as to the debt itself before acknowledgment.

These alterations in the Law of Scotland would supersede all the shorter prescriptions to which we have adverted, and would likewise include a numerous class of cases at present

falling under the long prescription of forty years only, and to this extent the Statutes 1469, c. 29, and 1474, c. 55, would be altered. In so far as these Acts are not thereby altered, we are of opinion that, in regard to personal rights, the period of prescription should be reduced from forty to twenty years.

We have not included among the Scottish prescriptions which we propose should be assimilated the septennial limitation of cautionary obligations, because this limitation is not properly of a *mercantile* character. It was introduced by the Act 1695, c. 5, in order to prevent "the great hurt and prejudice that have befallen many persons and families, and oftentimes to their utter ruin and undoing, by men's facility to engage as cautioners for others who, afterwards failing, have left a growing burden on the cautioners without relief." The Act provides, "that no man binding and engaging for hereafter for and with another, conjunctly and severally, in any bond or contracts for sums of money, shall be bound for the said sums for longer than seven years after the date of the bond; but that from and after the said seven years the said cautioner shall be *eo ipso* free of his caution, and that whoever is bound for another, either as express cautioner or as principal or co-principal, shall be understood to be a cautioner to have the benefit of this Act, providing that he have either clause of relief in the bond, or a bond of relief apart, intimated personally to the creditor at his receiving of the bond."

The operation of this prescription is very limited, as it applies only to cautioners engaging *expressly* as such, or to co-obligants having a bond of relief from the principal intimated at the time of the transaction to the creditor. It is excluded where the cautioner and principal debtor are bound together as full debtors; and if there be a bond of relief, it is necessary that at the time of the transaction it should be formally intimated to the creditor.

The Act has been held not to apply,—

1st. To co-obligants stipulating by a clause of relief their *mutual* remedies.

2nd. To a bond of corroboration for a debt already constituted.

3rd. To an engagement, by letter or otherwise, to pay, or see paid, a sum already lent.

4th. To a letter of guarantee in a mercantile transaction.

We humbly offer to your Majesty's gracious consideration this our Final Report.

T. B. CUSACK SMITH.<sup>1</sup> (L.S.)

C. CRESSWELL. (L.S.)

<sup>1</sup> The Master of the Rolls in Ireland would not concur in the recommendation in this Report with respect to the introduction of the Scotch Law of summary diligence into England and Ireland, to enforce payment of bills of exchange and promissory notes, unless some provision was also introduced to prevent fraudulent preference.

Under the proposed alteration of the Law of England and Ireland, bills of exchange and

JOHN MARSHALL.	(L.S.)
G. BRAMWELL.	(L.S.)
JAS. ANDERSON. <sup>2</sup>	(L.S.)
KIRKMAN D. HODGSON.	(L.S.)
THOS. BAZLEY.	(L.S.)
RO. SLATER.	(L.S.)

## EDUCATION AND EXAMINATION OF ATTORNEYS AND SOLICITORS.

### REPORT OF THE COMMITTEE OF THE INCORPORATED LAW SOCIETY.

*Appointed by the Council on 24th February, 1853, to consider the subject of the Examination of Gentlemen intended for the Profession of Attorneys and Solicitors to ascertain the extent of their Proficiency—First, in General Literature and Science; and, Secondly, in Knowledge of the Law in its several branches: and the Subject of the Classification of Candidates.*

THE Committee have considered various communications made to the Council relating to proposed improvements in the Education and Examination of Articled Clerks; some recommending that Examination should take place before articles; others suggesting that Certificates of Honour should be granted of attainments in Classical and General Education

promissory notes would have much the effect of warrants of attorney, and it would, in the opinion of the Master of the Rolls in Ireland, be most objectionable to introduce the Scotch Law of summary diligence into England or Ireland without some provision to prevent fraudulent preference.

Neither of the Bills before Parliament contains provisions to prevent such preference.

The petition from Birmingham to Parliament on the subject is, in the opinion of the Master of the Rolls in Ireland, very deserving of consideration.

<sup>1</sup> Mr. Anderson dissents from so much of the Report as, under the head of **PRINCIPAL DEBTOR AND SURETY**, recommends that the maxim that prevails in England and Ireland, "*Ex nudo pacto non oritur actio*," should not be interfered with, and that the rule that some consideration is essential to a valid contract should be preserved in those parts of the United Kingdom; and also from so much of the Report as, under the same head, recommends that the rule of the English and Irish Law, that an unqualified discharge by the creditor of one of several sureties operates as a discharge of all of them, should be extended to Scotland, being of opinion that the rule of the Law of Scotland, that an unqualified discharge by the creditor of one of several sureties operates as a discharge of the co-sureties only to the extent to which the surety discharged is bound to contribute to the relief of the others, ought to be extended to England and Ireland.

as well as of Legal fitness, but that such certificates be competed for or not at the option of the Candidate.

The Committee in deliberating upon the measures suggested for the improvement of their branch of the Profession, have felt it desirable to ascertain and consider the improvements which have been effected or proposed for the Examination of Candidates for admission to the Bar, and to the Medical and Clerical Professions. They find that many years ago the College of Surgeons and the Society of Apothecaries established regulations, under which a very comprehensive course of study became requisite on the part of Candidates applying for admission to practise, and that the Examinations at the College of Surgeons and Hall of Apothecaries have been conducted with considerable strictness, and with beneficial effect. It is also well known that, before Ordination, Candidates must pass several Classical as well as Theological Examinations, and (with few exceptions) graduate at one of the Universities. With regard to the Bar, the Benchers of the Four Inns of Court have formed a joint Council of Education for all the Inns, and have established Lectures and Examinations to which all the Students for the Bar are admitted, and attendance at which confers some advantages on the successful Candidates, although the Examination is not at present compulsory.

It is manifestly of great importance that the Attorneys and Solicitors should take steps to maintain their position amongst the Learned Professions. Considering that in the performance of their duties they have to advise clients in the highest ranks of society, on questions often of the most delicate nature, affecting the peace and happiness of families, and that their efficiency and usefulness are much increased where their general as well as legal attainments are such as to command respect and attention;—that they also have to appear before Committees of the Houses of Parliament, the Judges of the Superior Courts and other Tribunals; to attend Public Boards, and communicate with Official Authorities;—it is for the interest of the community at large that Attorneys and Solicitors should receive a liberal education, and, like the Members of the Clerical and Medical Professions, besides their professional skill, possess those advantages which a knowledge of the liberal sciences and the society of learned men are so well calculated to confer.

Before stating the improvements which the Committee consider desirable in the Classical, Scientific, and Legal Education of Attorneys and Solicitors, it may be proper to notice briefly some of the old provisions for promoting that object. So early as the year 1403,<sup>1</sup> it was enacted, "that all the Attorneys should be examined by the Justices, and that they that were good and virtuous, and of good fame, should be sworn well and truly to serve in their offices." In 1606,<sup>2</sup> it was enacted, "that

<sup>1</sup> 4 Hen. 4, c. 19.

<sup>2</sup> 3 Jac. 1, c. 7.

none should be admitted, except those brought up in the Courts, or otherwise well practised, and of skilful and honest disposition." And, in 1654, it was provided by a Rule of the Superior Courts at Westminster, "that none should be admitted an Attorney, unless he had practised five years as a Common Solicitor in Court, or had served five years as a Clerk, and should on examination be found of good ability and honesty for such employment, and that the Court should once in every year nominate twelve or more able Practisers to examine such persons as should desire to be admitted Attorneys."

In former times all Attorneys were required to be Members of some Inn of Court or Chancery, and to be in Commons every Term, according to the Rules of the Superior Courts in 1632, 1654, and 1684; and in 1704 all the Courts of Common Law ordered, "that all Attorneys not already admitted into one of the Inns of Court or Chancery, should procure themselves to be admitted; and that for the future no person should be sworn an Attorney or admitted, unless first admitted of one of such Inns."

The Inns of Court and Chancery have not enforced this regulation: and, in fact, for many years all the four great Inns of Court have excluded those whose names are on the Roll of Attorneys and Solicitors, or who are articled to Attorneys or Solicitors, from being admitted Members of those Societies.

In 1729,\* it was enacted, "that the Judges, before they admitted any person to take the oath required by the Act, should examine and inquire, by such ways and means as they thought proper, touching his fitness and capacity to act as an Attorney."

The Judges, by Rules of Trinity Term, 1791, and Trinity Term, 1793, made Regulations, under which applicants for admission were required to give a Term's notice thereof, in various public places. Under these Regulations the several Law Societies, and other persons interested in the subject, both in town and country, were enabled to make inquiries into the character and conduct of the applicants, and to submit any objection against them to the consideration of the Judges; for which purpose it was the practice to enter a *Caveat* at the Judges' Chambers, whereupon notice was given, and the case heard before the Judge; but no regular Examination took place before any of the Judges, either of the Common Law Courts or in Chancery, regarding the fitness and capacity of the applicant to discharge the duties of an Attorney or Solicitor.

The nature and extent of the Examination of Articled Clerks before their admission, were frequently under the consideration of the Committee of Management under the 1st Charter of the Incorporated Law Society, and of the Council under the 2nd. In the early part of the year 1835, the Committee of Management

presented a Memorial to the Judges and the Master of the Rolls, suggesting the expediency of an efficient Examination; and after many interviews with Deputations from the Society, the Judges of the Courts, both of Law and Equity, in 1836, made Rules and Regulations for the Examination of Candidates applying to be admitted; and in 1843, the Legislature authorised the Judges and the Master of the Rolls to appoint Examiners. The Master of the Rolls, by an order of January, 1844, and the Judges, by an order of Easter Term, 1846, carried these provisions into effect. The Examiners are the Masters of the several Courts of Law and 16 members of the Council of the Incorporated Law Society annually selected.

Several amendments in these Rules of Court were suggested by the Council and were adopted by the Judges; and the whole of the Regulations were consolidated by the Rules of Hilary Term, 1853, which came into operation on the 1st day of Trinity Term. Under these Rules the Examiners are authorised to require that the Candidates shall pass an Examination in the Law of Property and Conveyancing, as well as in Common Law and the Principles and Practice in Equity. They also continue the Examination in Bankruptcy, Criminal Law, and Proceedings before Magistrates, in order that the Candidates who answer the questions in these departments, may have the advantage of the ability shown in such Examinations in estimating their general qualifications.

In reviewing the course of Legal Education, it is not immaterial to observe that, so long as 22 years ago, the Incorporated Law Society instituted several courses of Lectures, which have been continued annually to the present time; and to these educational advantages may be added the formation by the Society of an extensive Law Library, consisting not only of the Text Books, Reports, Digests, and other works of a legal character, but also of Parliamentary Works, County History, Topography, and a large collection of miscellaneous books and books of reference.

On the 8th April, 1846, the House of Commons appointed a Select Committee "to inquire into the state of Legal Education in Ireland, and the means for its further improvement and extension," which inquiry was afterwards extended "to the state, improvement, and extension of Legal Education in England." It appears that 18 meetings of the Select Committee were held, 27 witnesses were examined, and on the 25th August, 1846, the Committee made their report, which was printed with the Evidence, and occupies 400 folio pages.

The Select Committee in their Report recommend "that in providing for the Legal Education of the solicitor a stringent Examination should be required, in proof of a sound General Education having been gone through previous to admission to apprenticeship. That this Examination should embrace, in addition to the ordinary acquirements of the so-called Commercial Education, a competent knowledge of at least Latin, Geography, History, the ele-

\* 2 Geo. 2, c. 23, s. 2.

ments of Mathematics and Ethics, and of one or more modern languages. . . . That, for the further education of the Solicitor, it would be highly advisable he should also have, even whilst articled Clerk, opportunities for attendance on certain classes of Lectures in the Inns of Court, and also on others of a nature more special to his own Profession, in the Law Society of which he might happen to be a member. . . .

That to render more beneficial Societies which embrace the double purpose of *surveillance* over the Profession and of instruction, it would be advisable to keep the purposes distinct, and to adopt in the appointment of professors, rules analogous to those recommended to the Inns of Court. . . .

That the Examination of the several courses which the future Solicitors should be required to attend, should be marked equally by a Certificate and Examination, and that the final Examination, as a condition for admitting to the Profession, should be conducted more in reference to general principles than technicalities, by enlarging and improving the Examination papers, and calling in some of the Examiners of the Inns of Court. . . .

That it should be in the power either of the governing bodies of the Inns of Court, or of the Solicitors' Societies, to admit the Certificates of attendance on Lectures in the Universities to a certain extent, as exempting from attendance on their own." Amongst the members of this Select Committee were, Sir Thomas Wilde, Mr. Walpole, Mr. Watson, Mr. Wyse, Mr. Hamilton, Mr. Ewart, and Mr. Godson.

Having thus noticed the past progress of Professional Education, and the views submitted to the House of Commons, the Committee proceed to offer some suggestions:—1st, On the General Education and Examination of persons entering into Articles of Clerkship. 2nd, On the mode of conducting the *Legal* Examination and the time at which it should take place.

The Committee are of opinion that the Student should have acquired a knowledge of English History, Geography, the Latin and French languages, Arithmetic, and Book-keeping; and that the Examinations should take place and Certificates of proficiency be granted by competent Examiners *before* or during Articles, or before admission. Such Examination may take place either in London or in the Provinces, as may be convenient.

If the Clerk has obtained a Degree at any of the Universities of Oxford, Cambridge, Dublin, London, or Durham, of course no further preliminary Examination would be required; nor would it be required from *Associates* of King's College, or University College, London, or the Colleges of Edinburgh, Glasgow, or Aberdeen, or the Queen's Colleges in Ireland.

It does not appear to be requisite that the Clerk should have attained any *high* degree of knowledge in Classics, the Sciences, or General Literature. Indeed, if such attainments were required, he could not enter on his Clerk-

ship until the age of eighteen or nineteen; and this might be of serious consequence to himself, or his father or guardian, by reason of the increased expense of education and maintenance.

If it were proposed to meet this difficulty by shortening the term of Clerkship, the consequences would be found generally disadvantageous; for though the inconveniences may not be sensibly felt of a few persons being introduced after taking a Degree at a University and serving a Clerkship of three years only, it is probable that not less than five years will be found requisite generally, for young men to acquire sufficient knowledge of the practical details of the Profession.

It should be recollected also that, however desirable such attainments may be, they must not be allowed to supplant the indispensable requisites of an extensive knowledge of the Law and the Practice of the Courts.

The Committee do not deem it necessary or expedient to set forth the names of the Authors in whose works they conceive the Examination should take place; because the Examiners would from time to time select and announce the books to which the Examination would extend. For the present, at all events, the Committee have deemed it sufficient to state the general scope of the preliminary Studies and Examination, leaving the details to be settled after the general plan has been approved.

The Committee have had under their consideration some cases, which might be deemed exceptions to the general rule, of persons of great industry and integrity, who have long and usefully served as Salaried Clerks in the Office of Solicitors, and who in the present state of the Law might be articulated and pass the present Legal Examination, but probably could not pass a Classical and Scientific Examination. Whilst the Committee regret that some meritorious persons may thus be excluded from the Profession, they are not prepared to suggest any exception in their favour, more especially as persons of intelligence and industry might by study and diligence prepare themselves to pass the Examination; and they think it would be ultimately better for such persons to undergo both Examinations, and place themselves upon an equal footing with the rest of the Profession, than to enter the Profession by favour of an exceptional regulation.

It has been suggested by the Metropolitan and Provincial Law Association, and concurred in by nine of the Provincial Law Societies, that the Articled Clerks should have *separate* Certificates of proficiency in four of the five branches of Law, and should compete for such certificates either together or separately, at fixed periods during their Clerkship.

It has also been suggested that the Candidates should be arranged in two classes: the first comprising those who *pass well*; the second, those who *barely pass*. This latter proposition the Liverpool and Hull Law Societies do

not consider necessary, if the other suggestions are adopted.

The course of proceeding adopted at the Legal Examination having been continued with slight alteration for 18 years, and it having become necessary at some of the Examinations to reject a considerable number—in one instance 20, in another 23, and in another 33 Candidates—the Committee have been induced to consider the method of Examination with a view to introduce some improvements therein; and they recommend that, instead of a General Examination founded on questions taken from various books, or from a recollection of points of practice occurring to the individual Examiners, a few works should be selected in each of the five Departments of Law and Practice—probably two in each Department will be found sufficient, and that the questions be chosen and the Students examined chiefly from such books.

It is anticipated that by these means the Students will be better enabled than at present to prepare themselves for the Examination, and that the Examination will, by being less diffused, be more useful to the Candidates and more satisfactory to the Examiners.

It is also recommended that the Examiners, at the commencement of each year, should announce the titles of the works in which Students will be examined in the following year.

For the information of the Students, the titles of the works in some of which he will be examined, should be given to him on entering into articles, in order that during the whole of his clerkship he may pursue a regular course of legal study, but his examination will be chiefly confined to a small number of them; of these he will have a year's preparatory notice.

It may be usefully stated to him, that it will be highly expedient he should throughout his Clerkship be diligently employed in making himself acquainted with the Commentaries of Blackstone, and as far as he can with the leading authorities to which that work refers, which he will find exceedingly useful in the prosecution of his studies in every department of the Law upon which he will be examined, and on which he will afterwards have to practise either as principal or as clerk.

The object of the suggestion of separate Legal Examination at different times in the five several branches of the Law, appears to be that the Student may be induced immediately to proceed in preparing himself for the first part of his Examination, instead of delaying his studies till the last year or two of the Term.

To this suggestion it may, however, be objected that it will occasion the additional expense and inconvenience to those who are articulated in the country (and who are seventenths of the whole) of coming twice to London; and that the labour to the Examiners and expense to the Society will be considerably increased.

If, however, the other proposed changes are effected, it may be desirable that the Examiners

should be authorised, if they deem it expedient, to subdivide their questions, and where the Clerkship is for the term of five years to examine the Clerk at the end of the third year, either in Common Law and Equity, or in Conveyancing and Bankruptcy, at his option; and at the termination of the Articles, in the remaining branches, including Criminal Law and proceedings before Magistrates. In the case of Graduates articulated for three years, such first Examination might be at the end of the second year, and the remaining Examination immediately before admission. But the Committee think that it will not be expedient for the sake of the clerk himself, nor convenient in conducting the Examination, to allow the Clerk to postpone, at his own option, the whole of the Examination till the end of the Term. If the alteration take place on the ground of its beneficial effect in studying the Law, the rule should be applicable to all the Candidates.

The subject of the *Classification* of the Candidates, or the selection of a certain number who have passed the Examination in a superior manner, has frequently been under the consideration of the Examiners. It was also adverted to by the Judges at the time the Rules and Regulations were framed, but no measure of that kind was then determined upon. The encouragement which such an honourable distinction would afford to Students is obvious; and although at the College of Surgeons and the Hall of Apothecaries,—whose examinations approach nearest to that held in the Hall of the Society,—no distinction or classification is made, yet on a careful consideration of the subject, the Committee have come to the conclusion that the Examiners should be empowered to make the following distinctions amongst the Candidates who pass the Examination:—

1st. That the Candidates who answer all the questions correctly shall be placed in the First Class.

2nd. That the Candidates who answer three-fourths of the questions correctly shall be placed in the Second Class.

3rd. That the Candidates who answer correctly a majority of the questions in the Departments of Common Law, Equity, and Conveyancing, but less than three-fourths, be allowed to pass, but not to rank in any class.

The Committee have not overlooked the fact, that at most of the Examinations there is a considerable difference in the age of the Candidates, and that there is much diversity in the means and facilities enjoyed by the Candidates of acquiring professional knowledge both in town and country. As, however, the future Examination is proposed to be confined to certain selected books, it will be in the power of all the Students to prepare themselves for answering any questions therein, and the Committee also think it right that no classifications should take place, unless the Candidates signify in writing at the time of delivering in their answers at the Examination, that they desire to compete for distinctions.

The Examiners have been often urged to establish some tests of merit amongst the Candidates; and a majority of such of the Provincial Law Societies as have expressed their opinions on the subject, are in favour of the distinctions which the Committee have now determined to suggest.

Several of the suggestions which the Committee have made may be carried into effect by the Judges under the authority of the Act of 6 & 7 Vict. c. 73; but others will probably require the sanction of the Legislature before they can be carried into effect. The Committee, however, anticipate no difficulty in this respect. When a Deputation from the Council attended the Chancellor of the Exchequer on the 23rd April, 1853, on his proposed reduction of the Stamp Duty on Articles, the right hon. gentleman expressed his approval of the suggestion made by the Deputation, for securing a better Education of the young men before entering the Profession, and stated that probably the Government would favourably entertain a proposition for effecting that object.

March 20, 1855.

## LAW OF ATTORNEYS AND SOLICITORS.

### RENEWAL OF CERTIFICATE.

It appeared, on this petition under the 6 & 7 Vict. c. 73, s. 25, for an order on the Registrar of Attorneys and Solicitors to grant the usual certificate, that Mr. Barber was supposed to be implicated in certain transactions relating to the transfer of some unclaimed moneys standing in the Bank books, which had been obtained by means of probates on forged wills procured by perjury, and that he had been tried, convicted, and sentenced to transportation. Subsequently, in consequence of representations made to Government, the Queen was pleased to grant a free pardon, and he returned to this country.

The petitioner had, in 1850 and 1851, made two unsuccessful applications of a similar nature to the Court of Queen's Bench, which had been refused. It was alleged that additional evidence had been since discovered, upon which this petition was presented. On an objection that the application should be made at Common Law, the *Master of the Rolls* said:—

"I am of opinion that the objection is an insuperable one, which I cannot get over. I felt it when I first read the petition. Upon an application either to admit or to restore a person to the Roll of Solicitors, the practice of this Court has always been to require that the application should, in the first instance, be made to one of the Common Law Courts; and I believe that no instance can be found of a

person having been admitted or restored to the Roll of Solicitors here, without having previously been admitted or restored to the Rolls of one of the Common Law Courts as an attorney.

"By this application I am asked to depart from the rule which the Court has adopted, and that in a case in which two successive applications have been made to the Court of Queen's Bench for a similar object and have been refused. I do not understand the expression of the Lord Chief Justice that 'this is our final decision' to mean that this is a case in which under no circumstances will we allow the matter to be brought again before us for our consideration. If those words are to be so treated, it is clear that the same observation would apply to the new matter attempted to be brought before me, and to the introduction of fresh evidence of a very material and important character, which was not before the Court of Queen's Bench. I have not the slightest doubt that both the Court of Queen's Bench and the other Courts in Westminster Hall will regard and consider the case of Mr. Barber, if it is brought before them upon evidence which was not before them upon the occasion of the previous decisions.

"I am asked upon the present occasion to rehear the case which has been twice before the Court of Queen's Bench, not by way of appeal, but because the evidence is different. But I think it would be productive of very serious inconveniences if I were to rehear the case; and I think the observations of Lord Cranworth apply to cases of this description.<sup>1</sup> It is a very serious inconvenience for one Court to decide upon a matter which has already been decided by another, and after one Court has pronounced its decision to allow the same case to be subsequently brought before another Court, either upon the same or with additional materials, in order to try to obtain a different decision upon the subject. It is true that the right does exist in the case of a writ of habeas corpus, and although the liberty of the subject may afford some reason for the exception, the inconveniences arising from it have been very obvious in a great many cases, and in a variety of instances. Even in Chancery, great inconveniences have frequently arisen from the attempts to obtain a decision of one branch of the Court at variance with that of another.

"I have felt from the first an inclination to view this case both as favourably and as leniently as I could, and I have been impressed with the circumstance of a free pardon having been granted by the Crown to this gentleman; but it would not have been possible for me to have interfered, even if the case had not already been tried before and decided by another Court, and if the application had been made to me in the first instance, unless an application had been previously made to one of the Common

<sup>1</sup> See *Esparte Wetherall*, 2 De G., M'N. & G. 363.



Law Courts, to allow him to take out his certificate. The application in substance is perfectly analogous to the case of restoring him to the roll, because, although the form of application is different, yet the application and the evidence are both exactly of the same character. I feel the objection still more strongly in a case where the application has already been made to one of the Common Law Courts, and has been refused.

"I am of opinion that I must allow this objection to prevail, and that I cannot go into the merits of this case; but I will allow the petition to stand over, with liberty to Mr. Barber to make such application as he may think fit." *Is re W. H. Barber*, 19 Beav. 378.

## LAW OF COSTS.

### OF INVESTMENT OF PURCHASE-MONEY FOR LAND TAKEN FOR RAILWAY.

*Held*, that the costs of a petition for the application of the purchase money of land taken by a railway company to the redemption of land tax, are chargeable on the company under the 8 & 9 Vict. c. 18, s. 80. *In re London, Brighton and South Coast Railway Company*, 18 Beav. 608.

### OF BILL FILED TO APPOINT NEW TRUSTEE.

A plaintiff filed a bill for the appointment of a new trustee, in a case in which it might have been done by petition, under the 13 & 14 Vict. c. 60. The Master of the Rolls said, that the defendant was entitled to all the costs. *Thomas v. Walker*, 18 Beav. 521.

## LEGAL CHRONOLOGY.

### MASTER OF THE ROLLS.

AN Equity Judge, so called from his having the custody of all charters, patents, commissions, deeds, and recognizances, which being made into rolls of parchment, gave occasion for that name. The repository of public papers, called the Rolls, is situated in Chancery Lane, and was formerly a chapel founded for the converted Jews, but after their having been expelled the kingdom, it was annexed for ever to the office of the Mastership of the Rolls. The Master of the Rolls is always of the Privy Council. By virtue of his office, he keeps a Court at the Rolls, where he hears and determines causes that come there before him; but his decrees are appealable to the Court of Chancery. The first Master of the Rolls was Adam de Godeby, appointed Oct. 1, 1291.

### MASTERS IN CHANCERY.

Owing to the extreme ignorance of Sir Christopher Hatton, Lord Chancellor of England, the first reference in a cause was made to a Master, A.D. 1568; and the Masters have been since chosen from among the most learned equity members of the Bar.

### LAWYERS.

The pleaders of the Bar, called Barristers, are said to have been first appointed by Edward I. or in his reign, 1291. Serjeants, the highest members of the Bar, were alone permitted to plead in the Court of Common Pleas. The first King's Counsel under the degree of Serjeant was Sir Francis Bacon, in 1604. The number of lawyers in England and Wales, counting London and country attorneys, solicitors, &c., is about 14,000.

### ÆDILES.

Magistrates of Rome, first created 493 B.C. There were three degrees of these officers; and the functions of the principal were similar to our justice of peace. The plebeian Ædiles presided over the more minute affairs of the state, good order, and the reparation of the streets. They procured all the provisions of the city, and executed the decrees of the people.

### ALDERMEN.

The word is derived from the Saxon *Ealdorman*, a senior, and among the Saxons the rank was conferred upon elderly and sage as well as distinguished persons, on account of the experience that their age had given them. At the time of the Heptarchy, aldermen were the governors of provinces or districts, and are so mentioned up to A.D. 882. After the Danes were settled in England, the title was changed to that of *earl*, and the Normans introduced that of *count*, which, though different in its original signification, yet meant the same thing. Henry III. may be said to have given its basis to this city distinction. In modern British polity, an alderman is a magistrate next in dignity to the mayor. Appointed in London, where there are 26, in 1242; and in Dublin, there are 24, in 1323. Chosen for life, instead of annually, 17 Richard II., 1394. Present mode of election established 11 George I., 1725. Aldermen made justices of the peace, 15 George II., 1741.—From *Haydn's Dictionary of Dates*.

## LEGAL ANTIQUITIES.

### ROYAL GRANT TO ERECT IRON YETS OR GATES.

THESE iron grated yetts or gates were formerly used as inner doors to the principal entrances of old castles in Scotland; several of them remain and present perfect representations of their construction and strength. Their general application appears to have followed upon the disuse of the portcullis, and were well adapted as effective safeguards against the

invasion of the Cateran, or highland robber, as well as a sure defence against the premeditated assaults of one baron upon the home and dependents of another. All baronial buildings situated near any pass in the highlands, or usual road-way or thoroughfare in the lowlands, were provided with them, and remain an incontestable proof of the general insecurity consequent on the lawless state of North Britain, till a very recent date. Still, these yets or gates, however needfully required for the protection of life and property, were not permitted to be attached to private dwellings without especial leave and licence from the king, and as these documents are now of extreme rarity, the following yet extant among the archives of the family of Ogilvy of Inverquhar, and kindly communicated by Sir John Ogilvy, will doubtless be read with much interest. It is addressed to the second baron of Inverquhar, and is entitled, "Licence be the King to Al. Ogilvy of Inverquhar to fortify his house and put ane iron yet therein," and proceeds thus:—

"JAMES be the grace of God Kinge of Scottis. To all and sindry oure liegies and subdits to qwhais knowladge theis our Llex [Letters] sall cum gretinge. Wit yhe vs to haue gevin and grauntit full fredome facultez and sp[eci]ele licence to oure loued familiare Sqwier Alex. of Ogilvy of Inuerquharaday for to fortifie his house and to strengthit with ane Irne yhet. Quharfor we straitly bid and commande that na man take on hande to make him impediment stoppage na distrouble in the makinge, raisinge, hynginge, and vpettinge of the saide yhet in his said house vndir all payne and charge at eftir may follow.

"Gewin vndir oure signet at Streveline the xxv° day of September ande of oure regne the sevint yeare [1444, or 1467]."

The lands and castle of Inverquhar were held by the ancestors of the present baronet from a period anterior to the year 1408, and were only recently alienated. The castle is now a ruin. The "Irne yhet" for which the above licence was obtained is still there in its original position. These iron gates hung on strong hinges, and secured by two or three bolts, varying in diameter from two to four inches, were not unfrequently aided in their repulsive quality by a thick bar of oak, one end of which being placed in an aperture in the wall, passed immediately behind the gate to an opposite niche chiselled in the stone work to receive it.

The tower or castle of Invermark, now roofless and a ruin, appears to owe much of its dilapidated condition to neglect, as between the time that the estate was sold by the last Lindsay of Edzell, to James, fourth Earl of Panmure, by whom as a Jacobite it was forfeited within the year following the purchase.—From *Willis's Current Notes*, August, 1855.

## SELECTIONS FROM CORRESPONDENCE.

### RIGHT TO A SPECIFIC PERFORMANCE OF A BUILDING CONTRACT.

A., a freeholder, enters into an agreement in writing with B., a builder, to grant him a lease at an annual ground rent, of a plot of ground, for a term of 70 years, on which B. agrees within a limited period to erect a certain number of houses. That time has elapsed and nothing whatever has been done with regard to the buildings.

Can A. maintain a bill for specific performance of the agreement, and if not, can he maintain an action for damages?

The writer has some recollection of a case or dictum that a bill could not be sustained on non-performance of a building agreement, but his memory does not serve him to state whether it was a case like that proposed, or that of a builder who had merely contracted to build a mansion for a gentleman according to a certain specification of his architect.

Sept. 19, 1855.

CIVIS, A.

## PROFESSIONAL LISTS.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From 21st Aug., to 21st Sept., 1855, both inclusive, with dates when gazetted.*

Abell, Francis Gibbs, and Henry Jones, Colchester, and 42, Southampton Buildings, Chancery Lane, Attorneys and Solicitors. Sept. 14.

Beisly, Sidney, David Read, and Samuel Rowles Pattison, 1, Lincoln's Inn Fields, Attorneys and Solicitors (so far as regards the said David Read). Sept. 4.

Hayes, William Steele, and William Hayes, Hales Owen and Oldbury, Attorneys and Solicitors. Sept. 14.

Nicholetts, Edwin, and Arthur Burridge, Bridport, Attorneys and Solicitors. Aug. 24.

Webber, Frederick, and Thomas Crabbe, Trowbridge, Attorneys and Solicitors. Aug. 21.

Welford, Edward Davison, and Thomas William Welford, of Hexham and Newcastle-upon-Tyne, Attorneys and Solicitors. Sept. 11.

### PERPETUAL COMMISSIONER.

*Appointed under the Fines and Recoveries' Act, with date when gazetted.*

Hyatt, John Ford, Newcastle-under-Lyme, in and for the county of Stafford. Sept. 14.

### COUNTRY COMMISSIONER TO ADMINISTER OATHS IN CHANCERY.

*Appointed under the 16 & 17 Vict. c. 78.*

Leech, Charles Denton, Bury St. Edmunds

## RECENT DECISIONS IN THE SUPERIOR COURTS.

**Master of the Rolls.***Hooper v. Cooke.* July 25, 1855.**RENT-CHARGES ON ESTATE. — CLAIM FOR OUTLAY AS AGAINST SECOND OWNER OF RENT-CHARGE.**

*There were two annual rent-charges on an estate, the owner of the first of which entered on the payments being in arrear, and expended a considerable sum of money on the property. The rents were sufficient to cover the rent-charge, but not such outlay: Held, that he was not entitled, as in the case of a mortgagee in possession, to such outlay against the owner of the second rent-charge.*

It appeared that the plaintiff was owner of a rent-charge of 4l. a-year on certain land, with powers of distress and entry, and which had been subsequently sold, subject to an annual rent-charge of 40l. The premises remained unproductive for about three years, when the plaintiff recovered possession in ejectment and entered on the land and expended a considerable amount thereon. The rent received was not, however, sufficient to reimburse the outlay as well as the arrears of rent-charge, and the plaintiff claimed to be entitled to such amount, as against the owner of the second rent-charge, who had brought an action at law in ejectment, which he now sought to restrain.

*Lloyd and Howe* for the plaintiff; *Palmer and Whitehead* for the defendant.

The Master of the Rolls said, that the owner of a rent-charge was not in the same position as a mortgagee in possession, as he had no estate, but that his remedy was by distress and entry, which he was entitled to enforce in a proper manner. The plaintiff had only a legal right, and the bill must be dismissed.

**Vice-Chancellor Kindersley.***Cockburn v. Ankitt.* July 26, 1855.**FORECLOSURE SUIT AGAINST TRUSTEES FOR SALE. — INFANT MORTGAGEES. — PARTIES.**

*A testator devised certain premises subject to a mortgage in trust for sale. The parties entitled to the equity of redemption were infants, but it appeared to be for their benefit to direct a sale in a foreclosure suit against the trustees appointed on the death of one and the insolvency of the other original trustee: Held, that the infants were sufficiently represented by the trustees, and a sale was decreed.*

The testator, by his will, after giving all his freehold, copyhold, and leasehold estates to his wife for life, gave certain premises included in a mortgage for 600l. to his nephew for life,

and on his death to his wife for life; and he directed that in case she should survive him the same should be sold, subject to the mortgage, and the proceeds be divided equally amongst his children then living. These children were all infants, and on this bill for an account and for a sale of the mortgaged premises, a question arose whether the new trustees, who had been appointed on the death of one and the insolvency of the other original trustee, sufficiently represented the mortgagees. It appeared that the sale would be for the benefit of the infants.

*Renshaw* for the plaintiff; *Baggallay* for the trustees.

The Vice-Chancellor held, that under these circumstances, the mortgagees were sufficiently represented by the trustees, and directed a sale accordingly.

**Vice-Chancellor Wood.***Roberts v. Karslake.* July 17, 1855.**SUIT TO ESTABLISH WILL AGAINST HEIRESS-AT-LAW. — DEVISAVIT VEL NON. — COSTS OF ISSUE, WHERE HEIRESS UNSUCCESSFUL.**

*An issue devisavit vel non was directed in a suit by a devisee under a will against the heiress-at-law, who set up a defence of mental incompetency of the testator. This was supported by evidence, although rebutted by counter-evidence on behalf of the plaintiff, who obtained a verdict: Held, that under such circumstances there would be no costs on either side.*

In this suit by a devisee under a will against the heiress-at-law to establish the will, an issue *devisavit vel non* had been directed, but on which the jury found in favour of the will, negating the defence of the testator's incompetency of mind set up. The case now came on upon further directions and costs.

*James and Bagshawe* for the plaintiff; *Roll and Cairns* for the defendant.

*Cur. ad. vult.*

The Vice-Chancellor said, that where the heir could show that he had set up the defence of insanity on the part of a testator upon fair and reasonable grounds, the usual rule would not prevail, although he failed, of being deprived of his costs. In the present case it appeared that, although the testator was subject to delirious fits, which even assumed the appearance of permanent insanity, he was beyond a doubt competent when he made his will. There was besides strong evidence adduced by the defendant, although rebutted by the plaintiff's counter-evidence; and in making a decree establishing the will, there would, therefore, be no costs on either side.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, OCTOBER 6, 1855.

### INNS OF CHANCERY.

#### PROPERTY IN TRUST FOR LEGAL EDUCATION.

In answer to the inquiries we have received, we take it to be quite clear that the property of the Inns of Chancery is held in trust for the benefit of the Students and Practitioners of the Law, either expressly or impliedly, as will appear by their ancient deeds and documents and the records of their ancient usages. Although the Ancients or Rulers of some of the Inns have discontinued their meetings and ceased to “come into Commons,” we conceive the original trust, either legally or equitably, remains unaltered, and must ere long be inquired into and enforced.

It appears that some of the Inns of Court receive a small or nominal rent from some of the Inns of Chancery, either by usage or under some ancient lease; but there can be no doubt that both the Benchers of the Inns of Court receiving such rents, and the Ancients of the Inns of Chancery, by whom they are paid, stand in the relation of trustees for promoting the study of the Law.

Whether these learned persons can be called on to account to the Court of Chancery in a suit at the instance in the one case of a Barrister-at-Law, and in the other of an Attorney-at-Law, we need not at present discuss. If a demurrer could be sustained to such a suit, the case would then come within the province of Parliament, whose duty it would be to see that the funds are properly applied according to the intention of the original grant or donation.

It is, however, not improbable that a question would be raised on the part of the Bar, that the original trust will be satisfied by applying the rents for the benefit of the Students and Members of the Bar. On the other hand, we contend that the trust includes all Students and Practitioners of the Law, and therefore that the Attorneys and their Articled Clerks are entitled to participate in the due application of the funds of these Societies.

There is one Inn of Chancery in particular, to which we formerly called attention, and again desire to bring to the notice of our readers, namely, *Furnival's Inn*, the ground rent of which, amounting to 500*l.* a-year, has been received by the Society of Lincoln's Inn for the last 30 years, and on the expiration of the present lease the learned Benchers will receive at least 5,000*l.* a-year.

We take the liberty, with all due respect, to ask, whether the 15,000*l.* they have already received and all future rents are justly applicable for the exclusive use of the Bar? or whether they should not *partly* or *wholly* be applied for the benefit of the Attorneys?

Down to the year 1825, or thereabouts, certainly in the year 1817, *Furnival's Inn* was a regular Inn of Chancery, consisting of Attorneys and Solicitors, governed by a Principal and Ancients, paying a small ground-rent of a certain number of “marks,” amounting to 3*l.* 6*s.* 8*d.*, to Lincoln's Inn, and applying the rest of the rents as they deemed proper. It seems probable that the old lease expired about this time, and the then Principal and Ancients neglected to procure a renewal. Whether Lincoln's Inn could have been compelled to renew the

lease at the same small rent, we are not prepared at present positively to assert; but it is remarkable that about the same period all the Inns of Court came to the resolution of excluding Attorneys and Solicitors from keeping Terms as members, or "coming into commons."<sup>1</sup>

The case, therefore, stands thus: prior to 1825, the Benchers were Trustees of the Funds for the benefit of the members of both branches of the Profession. They then excluded the second branch and devoted the funds to the sole advantage of the first branch. Now, if we admit they had the legal power to shut out the Attorneys—and if we admit that the income of Lincoln's Inn itself was properly applicable to the Bar alone,—we contend that in justice and fairness, the rents of the Inns of Chancery should be reserved and applied to the sole use of the Attorneys who previously received the rents subject merely to a nominal rent.

Let us illustrate our position by the case of a grammar or charity school founded for the instruction of children of two classes of inhabitants, and the trustees think it their duty to exclude one of these two classes, will any one say that, in equity they could hold and apply the funds for the benefit of the first class only? More especially, if part of the funds were derived from the inhabitants whose children were thus excluded? It has been often said that Boards have no feeling of shame; but we sincerely believe that there are many Benchers of Lincoln's Inn who would willingly allow the claim in question, when properly brought under their consideration.

It may be conceded that at present there is no legally constituted body belonging to Furnival's Inn, or the Attorneys thereof, duly authorised to receive the present or future rents, and apply them to the purposes of the ancient trust; and that the aid of the Legislature should be sought, to set the matter right, and authorise the Judges to settle a scheme for the due appropriation of the trust fund, for the benefit of those for whom it was intended. It would not be difficult to devise a beneficial plan, by associating all the Inns of Chancery into one College of Attorneys, and uniting them with the Incorporated Law Society, wherein an excellent and extensive Library is already formed, and where Lectures are de-

livered and the examination of Articled Clerks takes place.<sup>2</sup>

The attention of the Council of the Incorporated Law Society has already been directed to this subject. Two of the members of the Council and the Secretary have been examined before the Commissioners, and we doubt not that in due time the proper steps will be taken to promote the just interests of that branch of the Profession to which we refer.

In another article we have cited the opinion of *The Times* on the course of Legal Education at present prevailing in the Inns of Court.

### LECTURES AND EXAMINATIONS FOR THE BAR.

WE have from time to time laid before our readers the several Prospectuses of Lectures and Rules for Examination at the Inns of Court, according to the course prescribed by "the Council of Legal Education," nominated conjointly by the four Inns of Court. It will be recollected that by the regulations recently promulgated, the members of the Inns of Court who desire to be called to the Bar, have the option either of attending the lectures or of being examined. The reverse of this takes place in the other branch of the Profession, for since the year 1836, all Candidates for admission on the Roll of Attorneys must be examined;—they may attend the Lectures at the Incorporated Law Society or not as they please.

On this subject we think it proper to record the opinion of "The Times," given in that journal on the 22nd September.

"The Council of Legal Education, appointed by the four Inns of Court after the manner in which the Central Metropolitan Board of Works will be appointed by the select vestries, has just issued its programme for the public examination of legal students for Michaelmas Term, 1855. We have not a word to say against the subjects proposed for sifting the ability of those who aspire to the degree of barrister-at-law; but, when we consider the progress which has been made in so many departments during the present year towards a really efficient test of the merits of persons to be admitted into them, we cannot but regard such an examination as is proposed, taken with all its concomitant circumstances, as extremely discreditable to the Inns of Court, and as forcibly pointing them out as bodies incompetent

<sup>1</sup> There was an exception, we believe, as to such Attorneys and Solicitors as had already been admitted members of one of the Inns of Court, and some of whom are still alive.

<sup>2</sup> We must not omit the necessity of applying part of the fund to the Attorneys' Benevolent Institution.

to appreciate and unworthy to discharge a great and honourable public trust. In the course of the present year has been established the system of appointing civil servants of the East India Company by free and open competition, not attempting to regulate, but absolutely excluding the principle of patronage altogether. Of its effects on the civil service of India it would, of course, be premature to speak, but we already see that this examination has had the most marked and beneficial effects upon the general state of education, inducing a spirit of rivalry among our Universities unknown before, and laying the foundation for exertions which must result in the elevation of the intellectual standard of each, in remedying deficiencies, and placing education in the hands most competent to conduct it. The scientific departments of the military service have also been thrown open to free competition, with results equally beneficial to all schools and all Universities throughout the kingdom. Merit as the only ground of appointment, and examination as the only test of merit, are now admitted principles. Even Government is not wholly insensible to the new impulse, and has appointed a Board of Examiners, not, indeed, to promote by merit, but to apply a test which may mitigate the evils of patronage; and certainly the number of rejections which have already taken place clearly manifest the degree to which the public confidence has been abused in the appointment to public offices, and the vast good which even an inefficient system of examination honestly conducted may achieve.

"This being the state of public feeling and opinion, the representatives of the Inns of Court produced *their* system of examination. They also, like the East India Company, the Secretary at War, and the public departments, had something to give away. They have been intrusted with the responsible and honourable duty of admitting those whom they shall think worthy to practice in the Courts of Law, and to undertake a vast number of offices of fitness for which their certificate of admission is the only test. The same obligation which binds a bishop to lay hands suddenly on no man extends to these bodies, to which is committed the power of admission to a high and responsible office. The moral obligation imposed on them thoroughly to ascertain the learning and fitness of those in whose hands they vest a lucrative monopoly seems as perfect as any obligation can be. It is easy to point out how scandalously it is neglected. The system of the Inns of Court is to propose to those who choose to submit to it what we doubt not is a fair and searching examination, but to leave it entirely optional to candidates whether they will be examined or not. In order to induce them to be examined, bribes in the shape of studentships and remission of terms are held out; but if these inducements fail it is quite competent to the student, by attending a certain number of lectures, to escape examination altogether. We can imagine no scheme more discreditable or

more inefficient than this. An examination is not a good thing of itself—not an end, but means to the attainment of an end. The use of an examination previous to a call to the Bar would be to ascertain that every student before being called, possessed at least the *minimum* of qualification which may reasonably be expected from a member of a learned profession. To the highly qualified student the examination is a mere form; to a student of inferior qualification it is a serious, but most useful ordeal. To be of any use at all, an examination must be universal, for otherwise it does not succeed in its main object—that of fixing the standard of the Profession, and ascertaining a point below which no man's qualification who has once been admitted into it can possibly fall. Apply these obvious principles to the practice of the Inns of Court. If a student be highly qualified—that is, possessed of much more than that amount of qualification which would justify his admission into the Profession of a barrister—if, in fact, examination would be to him a mere useless form, many inducements are held out in order to persuade him to undergo it. Candidates are likely to have recourse to it just in proportion as such recourse is unnecessary. Those who are examined are not thinking of their call to the Bar, but of their scholarship or remission of terms. Wherever the test is applied, it will be in a case in which it might be dispensed with. But, by mixing up the studentship with examination, and making the examination optional, the benchers have, in fact, provided that the student is not necessarily the best man of his year, but only the best of those who are willing to compete.

"Take, now, the case of the inferior student—the person against whom the Profession and Public ought to be protected—to whom the test of an examination is a formidable reality, an obstacle requiring the strenuous exertion of all his industry and all his faculties to overcome. For him, supposing him to be gifted with the most ordinary degree of self-knowledge, there will be no examination at all. To what end should he submit himself to be examined? He has not, by the supposition, the remotest chance of obtaining a studentship or any other distinction, and all he can possibly hope for is the questionable honour of being plucked, and that in an examination to which he was not called upon to submit himself? It is the public interest that such persons should be strictly examined. It is their private interest that they should not. What worse can be said of a system than that it puts public and private interest in opposition to each other, and leaves every interested party to decide the question for himself? We once more take the liberty of warning the depositaries of this public trust, thus scandalously abused, that they are presuming too far on the patience and apathy of the public. Thinking men have with marvellous unanimity come to the conclusion that the deplorable state of law and jurisprudence among us arises from the narrow and imperfect education of our lawyers, disqualify-

ing them alike from laying down sound principles or applying them when laid down in a congenial spirit. For this the Inns of Court who have been trusted with and have grossly abused the care of Legal Education, are mainly, if not entirely responsible. Legal difficulties may prevent the restitution of their vast revenues to the purposes to which they were designed, and from which they have been diverted to the purposes of architecture and gastronomy; but assuredly no long time will elapse before a board of legal examiners, unconnected with the Inns of Court, is appointed, without whose certificate no one shall be allowed to practise at the Bar, and who shall merit by their ability and integrity that public confidence which the Inns of Court have so justly forfeited. When stripped of the power of calling to the Bar and reduced to the position of the keepers of taverns and boarding-houses, the governing bodies of the Inns of Court will probably become alive, when too late, to the dangers of their position, and perceive how impossible it will be to retain in their own hands any longer those revenues of the last excuse for retaining which—the superintendence of Legal Education—their own misconduct has deprived them.”

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages :—

- Purchasers' Protection, 18 Vict. c. 15,—p. 5.
- Lunacy Regulation Act, c. 13,—p. 32.
- Commons' Inclosure, c. 14,—p. 32.
- Newspaper Stamp Duties, c. 27,—p. 137.
- Sewers (House Drainage), c. 30,—p. 139.
- House of Commons' Proceedings, c. 33,—p. 139.
- Income Tax, c. 20,—p. 197.
- Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.
- Administration of Oaths Abroad, 18 & 19 Vict. c. 42,—p. 175.
- Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.
- Common Law Pleadings, c. 26,—p. 176.
- Infants' Marriage Settlements, c. 33,—p. 198.
- Palatine of Lancaster Trials, c. 46,—p. 241.
- Bills of Exchange and Promissory Notes, c. 67,—p. 256.
- Cinque Ports, c. 48,—p. 258.
- Commons Inclosure (No. 2), c. 61,—p. 275.
- Incumbered Estates Acts (Ireland) Continuance, c. 73,—p. 276.
- Places of Religious Worship Registration, c. 81,—p. 276.
- Friendly Societies, c. 63,—pp. 296, 319, 342.
- Limited Liability, c. 133,—p. 316.
- Despatch of Business, Court of Chancery, c. 134,—p. 338.
- Charitable Trusts, 1855, c. 124,—p. 358.

Crown Suits, c. 90,—p. 376.

Criminal Justice, c. 126,—p. 377.

Merchant Shipping Amendment Act, c. 91,—p. 395.

Bills of Lading, c. 111,—p. 398.

Youthful Offenders, c. 97,—p. 399.

Metropolitan Buildings' Act, 1855, c. 122,—pp. 416, 436.

### METROPOLITAN BUILDINGS' ACT, 1855.

18 & 19 VICT. c. 122.

[Concluded from p. 420.]

#### PART II.—DANGEROUS STRUCTURES.

69. Whenever it is made known to the Commissioners hereinafter named that any structure (including in such expression any building, wall, or other structure, and anything affixed to or projecting from any building, wall, or other structure,) is in a dangerous state, such Commissioners shall require a survey of such structure to be made by the district surveyor, or by some other competent surveyor, and it shall also be the duty of the district surveyor to make known to the said Commissioners any information he may receive with respect to any structure being in such state as aforesaid.

#### 70. Definition of "Commissioners."

71. Upon the completion of his survey the surveyor employed shall certify to the said Commissioners his opinion as to the state of any such structure as aforesaid.

72. If such certificate is to the effect that such structure is not in a dangerous state, no further proceedings shall be had in respect thereof, but if it is to the effect that the same is in a dangerous state, the Commissioners shall cause the same to be shored up, or otherwise secured, and a proper board or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner or occupier of such structure, requiring him forthwith to take down, secure, or repair the same, as the case requires.

73. If the owner or occupier to whom notice is given as last aforesaid fails to comply, as speedily as the nature of the case permits, with the requisition of such notice, the said Commissioners may make complaint thereof before a justice of the peace; and it shall be lawful for such justice to order the owner, or on his default the occupier of any such structure to take down, repair, or otherwise secure to the satisfaction of the surveyor who made such survey as aforesaid, or of such other surveyor as the said Commissioners may appoint, such structure or such part thereof as appears to him to be in a dangerous state, within a time to be fixed by such justice; and in case the same is not taken down, repaired, or otherwise secured within the time so limited, the said Commissioners may with all convenient speed cause all or so much of such structure as is in a dangerous condition to be taken down, repaired, or otherwise secured, in such manner as may be requisite; and all expenses incurred by the said Commissioners in respect of any

dangerous structure by virtue of the second part of this Act shall be paid by the owner of such structure, but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs.

74. If such owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the said Commissioners, after giving three months' notice of their intention to do so, by posting a printed or written notice in a conspicuous place on the structure in respect of which or of part of which they have incurred expense, or on the land whereon it stands, may sell such structure, and they shall, after deducting from the proceeds of such sale the amount of all expenses incurred by them, restore the surplus (if any) to the owner.

75. Payments by or to the Commissioners, how made.

76. In cases where any surplus is hereby made payable to any owner, if no demand for the same is made by any person entitled thereto within one year, then the same shall be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery, be placed to his account there to the credit of the owner (describing him so far as the Commissioners can), subject to the control of the Court, and to be paid out to the owner on his applying by petition, and proving his title thereto.

77. Fees to district surveyor.

78. Metropolitan Board may appoint special fees for services not provided for.

79. Fees to be deemed part of expenses.

80. In cases where a structure has been certified by a district surveyor, or such other surveyor as aforesaid, to be dangerous to its inmates, a justice of the peace may, if satisfied of the correctness of such certificate, upon the application of the said Commissioners, by order under his hand direct any inmates of such structure to be removed therefrom by a constable or other peace officer, and if they have no other abode he may require them to be received into the workhouse established for the reception of the poor of the place in which such structure is situate.

81. Powers of Commissioners to appoint officers.

### PART III.—PARTY STRUCTURES.

82. In the construction of the following provisions relating to party structures, such one of the owners of the premises separated by or adjoining to any party structure as is desirous of executing any work in respect to such party structure shall be called the building owner, and the owner of the other premises shall be called the adjoining owner.

83. The building owner shall have the following rights in relation to party structures; that is to say,

- (1.) A right to make good or repair any party structure that is defective or out of repair;
- (2.) A right to pull down and rebuild any party structure that is so far defective or

out of repair as to make it necessary or desirable to pull down the same:

- (3.) A right to pull down any timber or other partition that divides any buildings, and is not conformable with the regulations of this Act, and to build instead a party wall conformable thereto;
- (4.) In the case of buildings having rooms or stories the property of different owners intermixed, a right to pull down such of the said rooms or stories or any part thereof as are not built in conformity with this Act, and to rebuild the same in conformity with this Act;
- (5.) In the case of buildings connected by arches or communications over public ways or over passages belonging to other persons, a right to pull down such of the said buildings, arches, or communications, or any part thereof, as are not built in conformity with this Act, and to rebuild the same in conformity with this Act;
- (6.) A right to raise any party structure permitted by this Act to be raised, or any external wall built against such party structure, upon condition of making good all damages occasioned thereby to the adjoining premises or to the internal finishings and decorations thereof, and of carrying up to the requisite height all flues and chimney stacks belonging to the adjoining owner on or against such party structure or external wall;
- (7.) A right to pull down any party structure that is of insufficient strength for any building intended to be built, and to rebuild the same of sufficient strength for the above purpose, upon condition of making good all damages occasioned thereby to the adjoining premises, or to the internal finishings and decorations thereof;
- (8.) A right to cut into any party structure upon condition of making good all damages occasioned to the adjoining premises by such operation;
- (9.) A right to cut away any footing or any chimney breasts, jams, or flues projecting from any party wall, in order to erect an external wall against such party wall, or for any other purpose, upon condition of making good all damages occasioned to the adjoining premises by such operation;
- (10.) A right to cut away or take down such parts of any wall or building of an adjoining owner as may be necessary in consequence of such wall or building overhanging the ground of the building owner, in order to erect an upright wall against the same, on condition of making good any damage sustained by the wall or building by reason of such cutting away or taking down;
- (11.) A right to perform any other necessary works incident to the connexion of party structure with the premises adjoining thereto;

But the above rights shall be subject to this qualification, that any building which has been



erected previously to the time of this Act coming into operation shall be deemed to be conformable with the provisions of this Act, if it is conformable with the provisions of an Act passed in the 14 Geo. 3, c. 78, or with the provisions of the said Act of the 8 Vict. c. 84.

84. Whenever the building owner proposes to exercise any of the foregoing rights with respect to party structures the *adjoining owner* may require the building owner to build on any such party structure certain chimney jambs, breasts, or flues, or certain piers or recesses, or any other like works for the convenience of such adjoining owner; and it shall be the duty of the building owner to comply with such requisition in all cases where the execution of the required works will not be injurious to the building owner, or cause to him unnecessary inconvenience or unnecessary delay in the exercise of his right; and any difference that arises between any building owner and adjoining owner in respect of the execution of such works as aforesaid shall be determined in manner in which differences between building owners and adjoining owners are hereinafter directed to be determined.

85. The following rules shall be observed with respect to the exercise by building owners and adjoining owners of their respective rights:—

- (1.) No building owner shall, except with the consent of the adjoining owner, or in cases where any party structure is dangerous, in which cases the provisions hereby made as to dangerous structures shall apply, exercise any right hereby given in respect of any party structure, unless he has given at the least three months previous notice to the adjoining owner by delivering the same to him personally, or by sending it by post in a registered letter addressed to such owner at his last known place of abode:
- (2.) The notice so given shall be in writing or printed, and shall state the nature of the proposed work, and the time at which such work is proposed to be commenced:
- (3.) No building owner shall exercise any right hereby given to him in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner:
- (4.) Upon the receipt of such notice the adjoining owner may require the building owner to build or may himself build on any such party structure any works to the construction of which he is hereinbefore mentioned to be entitled:
- (5.) Any requisition so made by an adjoining owner shall be in writing or printed, and shall be delivered personally to the building owner within one month after the date of the notice being given by him, or be sent by post in a registered letter addressed to him at his last known place of residence: It shall specify the works required by the adjoining owner for his convenience, and shall, if necessary, be

accompanied with explanatory plans and drawings:

- (6.) If either owner does not, within 14 days after the delivery to him of any notice or requisition, express his consent thereto, he shall be considered as having dissented therefrom, and thereupon a difference shall be deemed to have arisen between the building owner and the adjoining owner:
- (7.) In all cases not hereby specially provided for where a difference arises between a building owner and adjoining owner in respect of any matter arising under this Act, unless both parties concur in the appointment of one surveyor they shall each appoint a surveyor, and the two surveyors so appointed shall select a third surveyor, and such one surveyor or three surveyors, or any two of them, shall settle any matter in dispute between such building and adjoining owner, with power by his or their award to determine the right to do, and the time and manner of doing any work, and generally any other matter arising out of or incidental to such difference; but any time so appointed for doing any work shall not commence until after the expiration of such period of three months, as is hereinbefore mentioned:
- (8.) Any award given by such one surveyor, or by such three surveyors, or any two of them, shall be conclusive, and shall not be questioned in any Court, with this exception, that either of the parties to the difference may appeal therefrom, to the County Court within 14 days from the date of the delivery of any such award as aforesaid, and such County Court may, subject as hereinafter mentioned, rescind or modify the award so given in such manner as it thinks just:
- (9.) If either party to the difference makes default in appointing a surveyor for 10 days after notice has been given to him by the other party in manner aforesaid to make such appointment, the party giving the notice may make the appointment in the place of the party so making default:
- (10.) The costs incurred in obtaining any such award as aforesaid shall be paid by such party as such one surveyor, or three surveyors, or any two of them, may determine:
- (11.) If the appellant from any such award as aforesaid, on appearing before the County Court, declares his unwillingness to have the matter decided by such Court, and proves to the satisfaction of the Judge of such Court that in the event of the matter being decided against him he will be liable to pay a sum, exclusive of costs exceeding 50*l.*, and give security, to be approved by such Judge, duly to prosecute his appeal and to abide the event thereof, all proceedings in the County Court shall thereupon be stayed; and it shall be lawful for such appellant to bring

an action in one of her Majesty's Superior Courts of Law at Westminster against the other party to the difference; and the plaintiff in such action shall deliver to the defendant an issue or issues whereby the matters in difference between them may be tried; and the form of such issue or issues, in case of dispute, or in case of the non-appearance of the defendant, shall be settled by the Court in which the action is brought; and such action shall be prosecuted and issue or issues tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of such Court, or as near thereto as circumstances admit:

- (12.) If the parties to any such action agree as to the facts, a special case may be stated for the opinion of any such Superior Court as aforesaid, and any case so stated may be brought before the Court in like manner and subject to the same incidents in and subject to which other special cases are brought before such Court, or as near thereto as circumstances admit; and any costs that may have been incurred in the County Court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.

86. Whenever any building owner has become entitled, in pursuance of this Act, to execute any work, it shall be lawful for him, his servants, agents, or workmen, at all usual times of working, to enter on any premises, for the purpose of executing and to execute such work, removing any furniture, or doing any other thing that may be necessary, and if such premises are closed he or they may, accompanied by a constable or other officer of the peace, break open any doors in order to such entry; and any owner or other person that hinders or obstructs any workmen employed for any of the purposes aforesaid, or wilfully damages or injures the said work, shall incur for every such offence a penalty not exceeding 10*l.*, to be recovered before a justice of the peace.

87. Any adjoining owner may, if he think fit, by notice in writing given by himself or his agent, require the building owner, before commencing any work which he may be authorised by this Act to execute, to give such security as may be agreed upon, or in case of difference may be settled by the Judge of the County Court, for the payment of all such costs and compensation in respect of such work as may be payable by such building owner.

88. The following rules shall be observed as to expenses in respect of any *party structure*; (that is to say,)

As to expenses to be borne jointly by the building and adjoining owner:

- (1.) If any party structure is defective or out of repair the expense of making good or repairing the same shall be borne by the building owner in due proportion regard

being had to the use that each owner makes of such structure:

- (2.) If any party structure is pulled down and rebuilt by reason of its being so far defective or out of repair as to make it necessary or desirable to pull down the same, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such structure:
- (3.) If any timber or other partition dividing any building is pulled down, in exercise of the right hereinbefore vested in a building owner, and a party structure built instead thereof, the expense of building such party structure, and also of building any additional party structures that may be required by reason of such partition having been pulled down, shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such party structure, and to the thickness required to the respective buildings parted thereby:
- (4.) If any room or stories, or any part of rooms or stories, the property of different owners, and intermixed in any building, are pulled down in pursuance of the right hereinbefore vested in any building owner, and rebuilt in conformity with this Act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such rooms or stories:
- (5.) If any arches or communications, or any parts thereof, are pulled down in pursuance of the right hereinbefore vested in any building owner, and rebuilt in conformity with this Act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such arches or communications:

As to expenses to be borne by building owner:

- (6.) If any party structure or external wall built against the same is raised in pursuance of the power hereinbefore vested in any building owner, the expense of raising the same, and of making good all such damage, and of carrying up to the requisite height all such flues and chimnies as are hereinbefore required to be made good and carried up, shall be borne by the building owner:
- (7.) If any party structure which is of proper materials and sound, or not so far defective or out of repair as to make it necessary or desirable to pull down the same, is pulled down and rebuilt by the building owner, the expense of pulling down and rebuilding the same, and of making good all such damage as is hereinbefore required to be made good, shall be borne by the building owner:

(8.) If any party structure is cut into by the building owner, the expense of cutting into the same, and of making good any damage hereinbefore required to be made good, shall be borne by such building owner :

(9.) If any footing, chimney breast, jama, or floor is cut away in pursuance of the powers hereinbefore vested in any building owner, the expense of such cutting away, and of making good any damage hereinbefore required to be made good, shall be borne by the building owner.

89. Account of expenses of works to be delivered to adjoining owner within one month.

90. At any time within one month after the delivery of such account, the adjoining owner, if dissatisfied therewith, may declare his dissatisfaction to the party delivering the same, by notice in writing given by himself or his agent, and specifying his objections thereto; and upon such notice having been given a difference shall be deemed to have arisen between the parties, and such difference shall be determined in manner hereinbefore provided for the determination of differences between building and adjoining owners.

91. If within such period of one month as aforesaid the party receiving such account does not declare in manner aforesaid his dissatisfaction therewith, he shall be deemed to have accepted the same, and shall pay the same on demand, to the party delivering the account, and if he fails to do so the amount so due may be recovered as a debt.

92. Where the adjoining owner is liable to contribute to the expenses of building any party structure, until such contribution is paid, the building owner at whose expense the same was built shall stand possessed of the sole property in such structure.

93. Where any building owner has incurred any expenses on the requisition of an adjoining owner, the adjoining owner making such requisition shall be liable for all such expenses, and in default of payment the same may be recovered from him as a debt.

94. Where any building owner is, by the third part of this Act, liable to make good any damage he may occasion to the property of the adjoining owner by any works authorised to be executed by him, or to do anything upon condition of doing which his right to execute such works is hereby limited to arise, and such building owner fails within a reasonable time to make good such damage or to do such thing, he shall incur a penalty, to be recovered before a justice of the peace, not exceeding 20*l.* for each day during which such failure continues.

95. Where, in pursuance of this Act, any consent is required to be given, any notice to be served, or any other thing to be done by, on, or to any owner under disability, such consent may be given, such notice may be served, and such thing may be done by, on, or to the following persons, on behalf of such persons under disability; that is to say,

By, on, or to a husband, on behalf of his wife :

By, on, or to a trustee, on behalf of his *cestui que trust* :

By, on, or to a guardian or committee, on behalf of an infant, idiot, or lunatic.

96. Where any consent is required to be given or any other thing to be done by any owner in pursuance of this Act, if there is no owner capable of giving such consent or of doing such things, and no person empowered by this Act to give such consent or to do such thing on behalf of such owner, or if any owner so capable, or any person so empowered, cannot be found, the Judge of the County Court shall have power to give such consent or do or cause to be done such thing on behalf of such owner, upon such terms and subject to such conditions as he may think fit, having regard alike to the nature and purpose of the subject-matter in respect of which such consent is to be given, and to the fair claims of the parties on whose behalf such consent is to be given; and such Judge shall have power to dispense with the service of any notice which would otherwise be required to be served.

#### PART IV.—MISCELLANEOUS PROVISIONS.

97. Where it is hereby declared that expenses are to be borne by the owner of any premises (including in the term "owner" the adjoining and building owner respectively), the following rules shall be observed with respect to the payment of such expenses :

(1.) The owner immediately entitled in possession to such premises, or the occupier thereof, shall in the first instance pay such expenses, with this limitation, that no occupier shall be liable to pay any sum exceeding in amount the rent due or that will thereafter accrue due from him in respect of such premises during the period of his occupancy :

(2.) If there are more owners than one, every owner shall be liable to contribute to such expenses in proportion to his interest :

(3.) If any difference arises as to the amount of contribution, such difference shall be decided by arbitration, to be conducted in manner directed by the Companies Clauses Consolidation Act, 1845; and for that purpose the clauses of the said Act with respect to the settlement of disputes by arbitration shall be incorporated with this Act :

(4.) If some of the owners liable to contribution cannot be found, the deficiency so arising shall be divided amongst the parties that can be found :

(5.) Any occupier of premises who has paid any expenses under this Act may deduct the amount so paid from any rent payable by him to any owner of the same premises; and any owner of premises who has paid more than his due proportion of any expenses may deduct the amount so overpaid from any rent that may be payable

by him to any other owner of the same premises :

- (6.) If any default is made by any owner or occupier in payment of any expenses hereby made payable by him in the first instance, or if default is made by any owner in payment of any other expenses or moneys due from him by way of contribution or otherwise in pursuance of this Act, then in addition to any other remedies hereby provided such expenses and moneys, if arising in respect of any matter within the provisions of the third part of this Act, may be recovered as a debt in due course of Law, but if arising in respect of any other matter under this Act may be recovered in a summary manner.

98. The following rules shall be observed with respect to the giving or service of any notice, summons, or order directed to be given or served under this Act in cases not hereinbefore provided for :

- (1.) A notice, summons, or order may in all cases be served personally :
- (2.) A notice, summons, or order may be served on any builder by leaving the same or sending it in a registered letter addressed to him at his place of address as stated by him to the district surveyor, or by putting up such notice, summons, or order on a conspicuous part of the building or premises to which the same relates :
- (3.) A notice, summons, or order may be served on the owner or occupier of any premises by leaving the same with the occupier of such premises, or with some inmate of his abode, or if there is no occupier by putting up such notice, summons, or order on a conspicuous part of the building or premises to which the same relates ; and it shall not be necessary to name the owner or occupier of such premises ; nevertheless, when the owner of any such premises and his residence, or that of his agent, are known to the party by whom or on whose behalf any notice, summons, or order is intended to be served, it shall be the duty of such party to send every such notice, summons, or order by the post in a registered letter addressed to the residence or last known residence of such owner or of his agent :

- (4.) A notice, summons, or order may be served on any district surveyor by leaving the same at his office.

99. Whenever any thing is hereby authorised to be done by a County Court it may be done as follows ; that is to say, if such thing arises in respect of any structure or other subject matter situate within the city of London or the liberties thereof, by the Sheriffs' Court established by a local Act 11 & 12 Vict. c. lxxi., intituled "An Act for the more easy Recovery of Small Debts and Demands within the City of London or the Liberties thereof," and if such

thing arises in respect of any structure or other subject-matter situate elsewhere, by the County Court having jurisdiction within the district in which such structure or other subject-matter is situate.

100. In cases where jurisdiction is hereby given to a County Court, such Court may from time to time make such order in respect of matters so brought before it as it may think fit, with power to settle the time and manner of executing any work, or of doing any other thing, and to put the parties to the case upon such terms as respects the execution of the work as it thinks fit : It shall also have power to award or refuse costs according to circumstances, and to settle the amount thereof.

101. Proceedings in any County Court in respect of any matter arising under this Act shall be conducted in the same manner as proceedings are conducted in any case within the ordinary jurisdiction of such Court, or as near thereto as circumstances permit ; and orders made by the Judge of any such Court may be enforced by execution, committal, or otherwise, in a similar manner to that in which the orders of such Court are ordinarily enforced.

102. If either party in any case over which jurisdiction is hereby given to a County Court feels aggrieved with the decision of such Court in respect of any point of law, or the admission or rejection of any evidence, he may appeal therefrom in the same manner and upon the same terms in and upon which he might have appealed from the decision of such Court in any case within the ordinary jurisdiction of such Court, or as near thereto as circumstances permit ; but no such appeal shall be allowed unless the value of the matter in difference between the parties exceeds 50*l.* ; and the opinion of the Judge before whom the case is tried as to such value shall be conclusive.

103. Recovery of penalties.

104. Application of penalties.

105. In cases where any building has been erected or work done without due notice being given to the district surveyor, the district surveyor may, at any time within one month after he has discovered that such building has been erected or work done, enter the premises for the purpose of seeing that the regulations of this Act have been complied with, and the time during which the district surveyor may take any proceeding, or do anything authorised or required by this Act to be done by him, in respect of such building or work, shall begin to run from the date of his discovering that such building has been directed or work done.

106. In every case, except in respect of fees of a district surveyor, in which jurisdiction is hereinbefore given to a justice of the peace, if either party to any such case is dissatisfied with the determination of the justice so convicting, in respect of any point of law, or of the admission or rejection of any evidence, such party may, upon giving notice within seven days to the other party of his intention to appeal, appeal therefrom to any of the Su-

perior Courts of Common Law at Westminster; subject to this restriction, that no such appeal shall be made by any district surveyor except with the consent of the justice before whom the case is tried, and that no such appeal shall be made by any other party to the case except upon giving such security for costs, and, if the case requires it, in addition thereto, such undertaking in respect of desisting in the meantime from any works complained of, or in respect of any other matter or thing arising in the case, as the justice thinks fit.

107. Any appeal so made shall be in the form of a special case, to be agreed on by both parties, or, if the parties cannot agree, to be settled by the justice from whose decision the appeal is made; and such case shall be transmitted by the appellant to the rule department of the Master's office in the Court in which the appeal is to be brought, and be heard in manner provided by the practice of such Court.

108. No writ or process shall be sued out against any district surveyor or other person for anything done or intended to be done under the provisions of this Act until the expiration of one month next after notice in writing has been delivered to him, or left at his office or usual place of abode, stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in such last-mentioned notice; and unless such notice is proved the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause of action, and not afterwards, and shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this Act and all special matter in evidence thereunder.

#### PART V.—REPEAL OF FORMER ACTS, AND TEMPORARY PROVISIONS.

Repeal of 8 & 9 Vict. c. 84, except ss. 54 to 63, and 9 & 10 Vict. c. 5, subject to the following provisions;

1. That such appeal shall not affect any proceedings authorised to be taken by the said Acts or either of them in respect of any act, omission, penalty, matter, or thing, and pending before the official referees or any other tribunal at the time of the commencement of this Act;
2. That in cases where any act, omission, or thing has occurred previously to the time of the commencement of this Act, in respect of which, if this Act had not passed, proceedings might have been taken under the said Acts or either of them, then proceedings in respect of such act, omission, or thing may be had under this Act in manner following; that is to say, if the matter in question is anything relating to

the rights of building and adjoining owners in respect of party structures, proceedings may be had in the County Court, but if the matter in question relates to the recovery of any penalty or to any other thing, proceedings may be had before any justice of the peace:

3. That so much of the 14 Geo. 3, c. 78, as was excepted from the operation of the Act of 8 Vict. c. 84 (that is to say), the sections 74 to 78, and 80 to 86 inclusive, shall continue in full force.

110. Any contract made previously to the passing of this Act for the erection of a new building shall be carried into effect in the same manner as if this Act had been passed at the time of the making thereof, and the necessary deviations from the terms of such contract may be made accordingly; and if any dispute arises in respect of any loss sustained by any party to such contract by reason of such necessary deviation, such dispute shall be determined by the County Court; and whenever any costs or expenses have been paid by any owner in pursuance of this Act, then as to any structure held under any lease or agreement made previously to the commencement of this Act it shall be lawful for such owner to recover the same from the persons hitherto liable by law, or by such existing lease or contract, to maintain or repair the structure in respect of which such costs and expenses have been incurred.

111. Nothing herein contained shall vary or affect the rights of liabilities as between landlord and tenant under any contract between them.

112. In cases where any iron building has been constructed or is in the progress of construction previously to the time at which this Act comes into operation, and doubts are entertained whether such building is permitted by law, any person interested in such building may make an application to the Commissioners of Works and Buildings, to signify their approval of such building; and the Commissioners of Works and Buildings, upon being satisfied of the stability of such building, may approve of the same, and upon such approval being given such building shall be deemed to have been constructed in manner permitted by law, and this section shall come into operation immediately after the passing of this Act.

113. Compensation to official referees and registrar.

114. Compensation to clerks in office of metropolitan buildings.

#### LAW OF ATTORNEYS AND SOLICITORS.

##### ORDER OF COURSE TO DELIVER AND TAX BILL.

IN this case the common order had been made as of course on a solicitor to deliver to the petitioner a bill of all such fees and disbursements as he *claims to be due to*

him from the petitioner, and for taxation and delivery up of papers, &c. It appeared that no bill had been delivered, the solicitor stating that all demands had been settled, and that he *claimed* no fees or disbursements.

The *Master of the Rolls*, on the motion for the four day order, varied the usual form of the common order by directing the solicitor to deliver a bill of fees and disbursements in all suits, causes, and other matters of business, in which he has been employed as the attorney or solicitor for the petitioner. *In re Smith*, 19 Beav. 329.

## LAW OF COSTS.

### OF WITNESSES ON COMMISSION DAY AT ASSIZES.

THE venue in an action was laid in Cornwall, and the commission day at Bodmin was March 22. The cause was settled in London, on the 20th, by the defendant's consenting to a Judge's order for the payment by instalments of the debt and costs as between attorney and client. The order was drawn up at 4 P.M. of the same day, and was sent by post that evening. Notice was immediately given on the receipt of the order to prevent the plaintiff's witnesses—11 in number—being brought to Bodmin; but before the notice arrived, the plaintiff's attorney in the country had procured a conveyance and started the witnesses who reached Bodmin in the evening of the 21st, whence they returned home on the following day.

The Master having disallowed the plaintiff the expenses of the witnesses, a rule was moved for to review the taxation.

*Jervis*, L. C. J., said:—"The Master certifies to us that the practice is universal, not to allow the costs of the attendance of witnesses at the assizes on the commission day. And he further tells us that he has consulted the Masters of the Court of Queen's Bench, and that they concur in that view. We cannot, therefore, grant a rule in this case. If there had been special circumstances to warrant it, and the Master had allowed these costs, we should not probably have interfered. But no special circumstances were shown before the Master, and none are suggested now. This is a matter which might have been provided for by the judge's order." *Harvey v. Divers*, 16 C. B. 497.

### ON MOTION FOR RULE, WHERE CAUSE SHOWN IN FIRST INSTANCE.

Where cause is shown in the first instance on a motion for a rule and it is refused, costs are never given. *Harvey v. Divers*, 16 C. B. 499.

## POINTS IN EQUITY PRACTICE.

### PARTIES ON PETITION TO APPOINT NEW TRUSTEES.

ON a petition under the 13 & 14 Vict. c. 60, to appoint new trustees in the place of two who were advanced in age and desirous of retiring, the *Master of the Rolls* required that both the old trustees and all the *cestuis que trustent* should appear, and directed the petition to stand over for the purpose. *In re Sloper*, 18 Beav. 596.

### LEAVE TO USE FURTHER EVIDENCE ON MOTION FOR DECREE.

Notice of motion for a decree having been given under the 15 & 16 Vict. c. 86, s. 15, the defendant moved *ex parte*, under the 26th Order of August 7, 1852, for leave to use further evidence than that specified by the 25th Order at the hearing.

The *Master of the Rolls* held, that such a motion could not be heard *ex parte*. *Richards v. Curlew*, 18 Beav. 462.

## THE ROMANCE OF FORGERY.

### MR. WARREN'S JURIDICAL MISCELLANIES.

IN the second volume of Mr. Warren's "Miscellanies, Critical, Imaginative, and Juridical," contributed to *Blackwood's Magazine*, is an interesting article, called "Modern State Trials," wherein is comprised the case of Alexander Humphreys, claiming the title of the Earl of Stirling, with great estates in Scotland and British North America. In the introduction to this romantic trial, Mr. Warren notices another extraordinary forgery by the Rev. William Bailey, LL.D., which he observes is of such an astounding character that he presents its leading features previous to entering on the trial of the pseudo Earl of Stirling.

"The Reverend Dr. Bailey, minister of St. Peter's, Queen Square, Westminster, was, till within the last few years preceding his trial, an attractive preacher, and highly respected by his congregation. Happening to see a paragraph in a newspaper announcing the recent

death of an obscure miser named Smith, of enormous wealth, with no near relations, and so uneducated as to be scarcely able to write his name, the deadly idea occurred to him, suggested by that evil one against whose temptations his life had been spent in warning others, of setting up a fictitious claim to a large sum of money, as due to his sister, from the deceased miser! He pitched, doubtless for greater probability's sake, upon the fractional sum of 2,875*l.*; and in due time forwarded to the executors copies of two instruments, an 'I O U,' and a promissory note for that amount, purporting to have been signed by the miser, and given to 'Miss Anne Bailey, of 45, Upper Arthur Street, Belfast, for value received from her, in cash advanced by her on loan to me. *Witness*—William Bailey, Clerk, LL.D., minister of St. Peter's, Queen Square, Westminster.' Not a little astonished by this sudden application, their testator having died worth several hundred thousand pounds, and no trace existing among his papers of any transaction in which the name of Bailey occurred—none of his acquaintances having ever heard of the name of Bailey, as known to the testator—the executors resolved to resist the action, and put the plaintiff to sworn proof in a public Court of Justice. The reverend gentleman stepped boldly into the box; first produced an account-book, containing various entries of loans by his sister to Smith, the deceased miser; and then swore point blank to his having witnessed the miser's signature to the 'I O U,' in the vestry-room of St. Peter's! *Just before divine service!* at seven o'clock on the evening of Thursday, the 12th August! His evidence was totally disbelieved; his pretended vouchers were impounded; and he was committed on the charge of forgery. How shall we proceed with the frightful facts elicited at his trial for that offence? First of all, it was proved beyond all doubt that, at the precise period pitched upon by the miserable forger as that on which he had witnessed the signature of the miser, the latter had been in company for two hours with a friend, a builder in the Hampstead Road, whose reason for remembering the circumstance was, that it was his wedding-day! But scarcely half of this tale of horror has yet been told. Not contented with having committed perjury himself, he procured, and endeavoured to procure, others to perjure themselves, in order to support this dismal fable concerning Smith's signature! He had met in the Brompton Road a poor Irishman who sold fruit by the roadside, and asked him if he would become a witness at the trial of an action! 'I looked at him,' said the man, 'and admired what he meant, but I said "yes," to see what his motive was.' The reverend delinquent then gave him a shilling, and told him to call at his house the next day; and on his doing so, gave him a written paper, which he was to commit to memory—the purport being, that he had seen Smith go into the vestry of St. Peter's, and come out again in five minutes, followed by Dr. Bailey in his

surplice, on the evening of the 12th August! The man preserved, and exhibited in Court, at the trial of Dr. Bailey, this blighting evidence of guilt! The witness had been taken to the Exchequer Office, and there had signed his false depositions; but when sent down to swear publicly in Court to the falsehood, 'his flesh,' he said, 'crawled on his bones, and he ran away!' Yet again—the prisoner had given 30*l.* to a reduced tradesman to swear to the same falsehood, and he did so swear, as he confessed!—the Doctor having told him that, 'unless he did the Doctor's sister was in danger of being robbed of 3,000*l.*.' Dr. Bailey's written instructions to both witnesses were produced in Court, and proved, on his trial! Nor have we even yet reached the depth to which this abandoned of God descended in the abyss of guilt. He called several unfortunate women—discharged servants, milliners, and others—whom he had tutored to swear to different portions of the imaginary transaction between himself and Smith! But the prosecution, aided by secret memoranda which they had discovered in Dr. Bailey's desk, easily rent asunder this black tissue of perjury. Finally, as though to add an infernal glare to these atrocities, Dr. Bailey succeeded in producing several witnesses, of unquestionable respectability, who conscientiously deposed to his eminence as a preacher, and the estimation in which he was held as a man of moral worth! All, however, was in vain: he was found guilty, and transported for life. 'How venial,' justly observes Mr. Townsend, 'in comparison with his double guilt, yet how sad in contrast, the sin and punishment of Dr. Dodd!' We conceive that few cases blacker than this are on record in the annals of crime. It were vain to speculate on the state of mind and of feeling of an accepted and successful minister of religion who could conceive, and proceed deliberately to carry into execution, as he did, the idea of such an enormous atrocity!"

## SELECTIONS FROM CORRESPONDENCE.

### INSURANCE OFFICES.

SOME of the recent insurance offices may have reaped a rich harvest by their advances to the needy:—witness the late bankruptcy proceedings connected with one of the most eminent firms in the City. I have lately met with an office called the "Life, Education, Casualty, and Self-Relief, Assurance Company"—capital nearly half-a-million—fully subscribed for by hundreds of persons of the highest character and respectability, whose names and addresses are registered in the Government office, and are also published by the company. Doubtless they are ready to advance their thousands, taking their policies and sureties as security.

ONE, &c.

## ENFRANCHISEMENT OF COPYHOLDS.

The Profession will be indebted to "A Lord of a Manor" if he will give them a little further insight into the case to which he alludes in the *Legal Observer* of the 8th September.

I am just about to complete an enfranchisement for a tenant, under the compulsory procedure, and I have calculated upon having to advise my client that he must pay everybody's costs in the business. But I am not aware that there will be any "expenses of surveyors," or of "Evidence adduced by the Lord;" and I am therefore inclined to think that the decision of the Commissioners in the case referred to by "A Lord of a Manor" must have been occasioned by an appeal or other special circumstances, producing "expenses which, in the judgment of the Commissioners" were *not* "incidental to the enfranchisement."

It will be observed that the Commissioners are empowered to determine what expenses are incidental to enfranchisements:—Was it in the exercise of that power that they charged the lord in the "recent case?"

R—L.

## CONVEYANCE.

Certain freehold property was conveyed to a trustee to such uses as man and wife should appoint. In default of joint appointment, remainder as wife should appoint;—ultimate remainder to wife in fee. The husband and wife jointly appoint. Query, must the deed be enrolled and acknowledged under 3 & 4 Wm. 4, c. 74, or does it come under the exception of sect. 78 of that Act? A "case in point" would oblige.

F. S.

## FORFEITURE OF COPYHOLDS.

A lord of a manor, 35 years ago, seized a copyhold estate for want of heirs, and has ever since remained in receipt of the rents and profits. Is the customary heir precluded by lapse of time from claiming admittance? A.

## LUNACY.—COMMISSION AT THE INSTANCE OF A STRANGER.

A., a young lady about 30, an orphan, but whose mother is living, is entitled to about 12,000*l.*, independent of a considerable sum under her father's will, who died a few years ago.

A. is a confirmed lunatic, having, as well during the life of her father as subsequently, been confined in a private lunatic asylum, but no legal proceedings have been taken to protect her property or person, and as the family do not seem disposed to adopt any such, I wish to ascertain whether it is competent for a stranger to take the initiative with that view.

AMICUS.

## GAME CERTIFICATE DUTY.

Are persons who hunt with fox hounds or harriers liable to be charged for a game certificate?

A. SPORTSMAN.

## LEGAL OBITUARY.

THE following are the names of those *Attorneys and Solicitors* who have died since our last Obituary, vol. 49, p. 280, prepared from the returns to the Registrar of Certificates.

The names marked thus (\*) were members of the Incorporated Law Society.

*Adams*, Charles, Solicitor and Perpetual Commissioner, of Darlaston (firm C. and J. F. Adams). Admitted on the Roll Michaelmas Term, 1810.

*Batley*, Henry, Solicitor, of 12, Gray's Inn Square. Admitted on the Roll Hilary Term, 1826.

*Barber*, John, Solicitor of Adderbury, Oxon. Admitted on the Roll Hilary Term, 1803.

*Barley*, Edmund, Solicitor, of March, Cambridgeshire (firm Barley, Wise, and Dawbarn). Admitted on the Roll Easter Term, 1810. Died October 10, 1854.

*Bush*, John, Solicitor and Perpetual Commissioner, of Bristol. Admitted on the Roll Hilary Term, 1799. Died in 1854.

*Capes*, Thomas Hawkaley, Solicitor and Notary, of Goole, Yorkshire. Clerk to the Howdenshire Court of Sewers. Admitted on the Roll Easter Term, 1821. Died in 1854.

*Clarke*, John, Solicitor, of Upton-upon-Severn, Worcestershire. Admitted on the Roll Trinity Term, 1800. Died in 1854.

\**Collisson*, William, Solicitor, of 28, Great James Street, Bedford Row (firm Taylor and Collisson). A Commissioner to administer Oaths in Chancery, and for many years Clerk of Assize for the Midland Circuit. Admitted on the Roll Hilary Term, 1826. Died July 11, 1855.

\**Coleridge*, Francis George, Solicitor of Ottery St. Mary, Devon (firm Coleridge and Son). Admitted on the Roll Trinity Term, 1816. Died in 1854.

\**Crealock*, William Belton, Solicitor, of 4, Regent Street, Waterloo Place (firm Karslake, Crealock, and Karslake). Admitted on the Roll Trinity Term, 1810. Died September, 1854.

*Crossfield*, Abraham, Solicitor, of 2, Elizabeth Terrace, Hackney Road. Admitted on the Roll Michaelmas Term, 1829. Died July 7, 1854.

*Crowsh*, Christopher, Solicitor, of 37, Southampton Buildings, Chancery Lane. Admitted on the Roll Trinity Term, 1825.

*Cranke*, John, Solicitor and Perpetual Commissioner, of Ulverstone, Lancashire, Steward of the Manor of Ulverstone, Dalton, Plain Furness, Hawkeshead, Egton, with Newland and Bolton-with-Adgarley. Admitted on the Roll Trinity Term, 1812. Died April, 1854.

*Cunliffe*, John, jun., Solicitor, of Preston, one of the Coroners for the County Palatine of Lancaster (firm Cunliffe and Watson). Admitted on the Roll Trinity Term, 1841.

*Dey*, William, Solicitor, of St. Neots and Kimbolton, Huntingdonshire. Admitted on



the Roll Hilary Term, 1798. Died March, 1854.

*Day*, John, Solicitor of Upton-upon-Severn, Worcestershire. Admitted on the Roll Hilary Term, 1823. Died June 17, 1854.

*Dodsworth*, Charles, Solicitor, of Kidderminster. Admitted on the Roll Trinity Term, 1851.

*Drummond*, Nelson, Solicitor, of Cocker-mouth. Admitted on the Roll Hilary Term, 1849.

*Eberhardt*, Henry, Solicitor, of Stourbridge, Worcestershire (firm Roberts and Eberhardt). Admitted on the Roll Hilary Term, 1841. Died in April, 1854.

*Edwards*, Jeffery John, Solicitor, of Totness, Devonshire. Admitted on the Roll, Michaelmas Term, 1826. Died in October, 1854.

*Faithfull*, George Lockton, Solicitor, of Tring, Hertfordshire (firm Faithfull and Shugar), Commissioner to administer Oaths in Chancery and for Affidavits. Admitted on the Roll Hilary Term, 1836. Died July, 1855.

\**Fearnhead*, Peter, Solicitor, of Edith Weston, near Stamford, Rutlandshire, and formerly of No 14, Clifford's Inn. Admitted on the Roll Trinity Term, 1819. Died May 8, 1855.

*Fisher*, John, Solicitor, of Blackburn, Lancashire (firm Wilding and Fisher). Admitted on the Roll Trinity Term, 1828. Died Sept. 16, 1854.

*Fisher*, Robert, jun., Solicitor and Perpetual Commissioner, of Newport, Shropshire (firm Fisher and Washbourne). Admitted on the Roll Michaelmas Term, 1829. Died October, 1854.

*Garry*, William Henry, Solicitor, of 79, Basinghall Street, and 44, Great Winchester Street, City. Admitted on the Roll Michaelmas Term, 1826.

*Gardner*, Sladden, Solicitor, of New Romney, Kent (firm Stringer and Gardner), Clerks to the Commissioners of Romney Marsh Level. Admitted on the Roll Michaelmas Term, 1849.

*George*, Thomas, Solicitor, of Cardigan (firm T. and W. G. George). Admitted on the Roll Michaelmas Term, 1830. Died December, 1854.

\**Gordon*, Alexander, Solicitor, of 57, Old Broad Street, City (firm Gordon and Son). Admitted on the Roll Michaelmas Term, 1794. Died December 19, 1854.

*Gowers*, James, Solicitor, of 15, Featherstone Buildings, Holborn. Admitted on the Roll Hilary Term, 1824.

*Hayes*, Joseph, Solicitor, of 8, Craig's Court, Charing Cross. Admitted on the Roll Trinity Term, 1837.

\**Hampson*, John, Solicitor, of Manchester (firm J., J. H., and F. Hampson). Admitted on the Roll Trinity Term, 1815. Died 1854.

*Harrison*, John Vesfield, Solicitor, of Woodstock, Oxfordshire, a Magistrate of the Borough and a Commissioner of Assessed Taxes and to Administer Oaths in Chancery and for Affidavits. Admitted on the Roll Trinity Term, 1811.

*Harris*, Frederick, Solicitor, of Birmingham. Admitted on the Roll Easter Term, 1846. Died November, 1854.

*Holmes*, Joseph Hanby, Solicitor, of Bury St. Edmunds, Suffolk (firm Jackson, Sparke, and Holmes), Town Clerk and Clerk of the Peace. Admitted on the Roll Easter Term, 1836. Died 1855.

*Holt*, William James, Solicitor, of *The Cloisters*, Gloucester (firm T. and W. J. Holt). Admitted on the Roll Trinity Term, 1843. Died September 24, 1854.

\**King*, Edward, Solicitor, of Bath, Steward of St. John's Hospital (firm King and Powell). Admitted on the Roll Michaelmas Term, 1830. Died April, 1855.

*Kirkpatrick*, Edward Bruce, Solicitor, of Whitechurch, Shropshire. Admitted on the Roll Trinity Term, 1845. Died July 18, 1854.

*Matthews*, John, Solicitor, of Oxford. Admitted on the Roll Hilary Term, 1828. Died August 25, 1854.

*Moseley*, Oswald, Solicitor, of Congleton, Cheshire. Admitted on the Roll Michaelmas Term, 1842.

\**Nash*, William Hollick, Solicitor and Perpetual Commissioner, of Royston, Hertfordshire (firm Nash and Thurnall). Admitted on the Roll Trinity Term, 1821. Died April, 1855.

*Newall*, William Nelson, Solicitor, of Rochdale, Lancashire. Admitted on the Roll Hilary Term, 1833. Died February 21, 1854.

\**Nichols*, John, Solicitor, of 9, Cook's Court, Lincoln's Inn (firm Nichols and Clark). Admitted on the Roll Easter Term, 1833. Died February 27, 1855.

\**Norton*, William James, Solicitor, of 1, New Street, Bishopsgate, and Woodford (firm Norton and Son), Solicitors to the Kent Mutual Life Assurance Society. Admitted on the Roll Trinity Term, 1813. Died August 20, 1855.

*Paul*, Charles William, Solicitor, of Tetbury, Gloucestershire (firm J. T., R. C., and C. W. Paul). Admitted on the Roll Easter Term, 1838. Died March, 1854.

\**Piercy*, Samuel, Solicitor, of 15, Three Crown Square, Southwark (firm Piercy and Hawks). Admitted on the Roll Hilary Term, 1824. Died June 4, 1855.

*Prudence*, William, Solicitor, of 6, Basinghall Street, City, and Mitcham (firm Sutton, Ommanney, and Prudence). Admitted on the Roll Hilary Term, 1844. Died 1855.

*Price*, Thomas, Solicitor, of Ruthin, Denbighshire. Admitted on the Roll Hilary Term, 1843. Died March, 1854.

*Prickett*, William Ward, Solicitor, of Alcester, Warwickshire. Admitted on the Roll Hilary Term, 1818.

*Rackham*, William, Solicitor, of Norwich (firm Rackham and Cooke). Admitted on the Roll Trinity Term, 1808. Died October 18, 1854.

*Rawling*, Charles, Solicitor, of Exeter, Devonshire. Admitted on the Roll Trinity Term, 1830. Died April, 1854.

**Redwood**, Charles, Solicitor and Perpetual Commissioner, of Cowbridge, Glamorganshire. Admitted on the Roll Michaelmas Term, 1830. Died April, 1854.

**Richards**, Charles, Solicitor, of Exeter and Topsham, Devonshire. Admitted on the Roll Michaelmas Term, 1843.

**Roche**, Garrard, Solicitor, of 2, Upper Wellington Street, Covent Garden, Clerk to Commissioners of Land and Assessed Taxes, and Property and Income Tax for St. Paul, Covent Garden (firm Roche and Plowman). Admitted on the Roll Easter Term, 1799.

**Ronalds**, Charles, Solicitor, of 96, Guildford Street, Russell Square. Admitted on the Roll Michaelmas Term, 1819.

**Robinson**, Thomas Caldwell, Solicitor, of Altrincham, Cheshire (firm Robinson and Southern). Admitted on the Roll Easter Term, 1828. Died December 24, 1853.

**Russ**, Harry, Solicitor, of Castle Cary, Somersetshire. Admitted on the Roll Easter Term, 1806. Died 1854.

**Salt**, John, Solicitor, of Rugeley, Staffordshire. Admitted on the Roll Easter Term, 1843. Died May, 1854.

**Sims**, William Sturgeon, Solicitor, of Sawbridgeworth and Bishops Stortford, Hertfordshire (firm Sims and Unwin). Admitted on the Roll Hilary Term, 1826.

**Smith**, Charles Henry, Solicitor, of 13, Duke Street, Manchester Square (firm Smith and Page). Admitted on the Roll Easter Term, 1834. Died August, 1854.

**Solly**, James Smith, Solicitor, of Sandwich, Kent. Admitted on the Roll Michaelmas Term, 1841. Died December 24, 1853.

**Stafford**, Thomas, Solicitor of 13, Buckingham Street, Strand (firm Gee and Stafford). Admitted on the Roll Hilary Term, 1849. Died July 7, 1854.

**Tattershall**, Edward Brooksbank, Solicitor, of 9, Great James Street, Bedford Row. Admitted on the Roll Easter Term, 1822.

**Tinley**, John Thomas Browne, Solicitor, of North Shields and Tynemouth, Northumberland (firm J. and J. T. B. Tinley). Admitted on the Roll Easter Term, 1836. Died 1854.

**Tooke**, Edward, Solicitor, of Manchester (firm Potter and Tooke). Admitted on the Roll Hilary Term, 1850. Died Feb. 1854.

**Turner**, Charles, Solicitor, of Huddersfield, Yorkshire. Admitted on the Roll Michaelmas Term, 1837. Died 1854.

**Umbers**, Thomas, Solicitor, of Cheltenham, Gloucestershire, Solicitor to Stratford-upon-Avon new Association for the Prosecution of Felons. Admitted on the Roll Michaelmas Term, 1828. Died May, 1854.

**Veal**, James, Solicitor, of 19, Abingdon Street, Westminster. Admitted on the Roll Hilary Term, 1800. Died Oct. 5, 1854.

**Walker**, William Falconar, Solicitor, of 5, Duke Street, Adelphi. Admitted on the Roll Michaelmas Term, 1823.

**Watson**, Samuel, Solicitor, of 12, Bouverie Street, Fleet Street, and Hammersmith (firm Watson and Sons). Admitted on the Roll

Michaelmas Term, 1809. Died January 20, 1854.

**Washbourne**, William, Solicitor, of Newport, Shropshire (firm Fisher and Washbourne). Admitted on the Roll Trinity Term, 1839. Died January, 1855.

**Wedlake**, Henry Brayley, Solicitor, of 10, King's Bench Walk, Temple (firm Clowes, Wedlake, and Clowes). Admitted on the Roll Trinity Term, 1819. Died March, 1855.

**Whitefield**, John Charles, Solicitor, of St. Columb and Padstow, Cornwall. Admitted on the Roll Easter Term, 1853. Died March 8, 1854.

**Winter**, Robert, Solicitor, of 16, Bedford Row (firm Winter, Williams, and Co.) Admitted on the Roll Michaelmas Term, 1811. Died July 15, 1855.

**Williamson**, William, Solicitor, of Derby. Admitted on the Roll Trinity Term, 1828.

**Wilson**, Robert, Solicitor, of Sunderland, Durham. Admitted on the Roll Michaelmas Term, 1821. Died Jan. 4, 1854.

**Wood**, Thomas, Solicitor, of the Guildhall Justice Room. Admitted on the Roll Michaelmas Term, 1807. Died, 1855.

## LOCAL AND PERSONAL ACTS.

*Declared Public, and to be Judicially Noticed.*  
18 & 19 VICT.

1. An act to amend "The Pudsey Gas Act, 1845," and to enable the Company thereby incorporated to raise a further Sum of Money.

2. An act for incorporating the Woolwich, Plumstead, and Charlton Consumers' Gas Company.

3. An act to enable the Cambridge University and Town Waterworks Company to raise further Money.

4. An act to enable the Taunton Gaslight and Coke Company to raise a further Sum of Money, and for other purposes.

5. An act for erecting and maintaining a Bridge over the River Wye at a Place called Hoarwithy Ferry, in the parishes of Hertland and King's Cople in the County of Hereford, and for making convenient approaches thereto.

6. An act to transfer to the Corporation of the Town of Brighton the Property, Powers, Privileges, and Liabilities of the Brighton Improvement Commissioners.

7. An act for granting further Powers to the Folkestone Waterworks Company.

8. An act for more effectually lighting with Gas the Town of Stalybridge and the Neighbourhood thereof in the Counties of Chester and Lancaster and in the West Riding of the County of York.

9. An act for supplying with Gas the Townships of Ossett-cum-Gawthorpe in the Parish of Dewsbury, and Horbury in the Parish of Wakefield, all in the West Riding of the County of York.

10. An act for enabling the Monmouthshire Railway and Canal Company to raise further Capital, and for other purposes.

11. An act for constructing a Railway from Bridport to Maiden Newton, on the Wilts, Somerset, and Weymouth Railway in the County of Dorset.
12. An act to consolidate and amend the Provisions of the Act relating to the Ratchiff Gaslight and Coke Company.
13. An act to enable the Leeds, Bradford, and Halifax Junction Railway Company to raise additional Capital; and for other purposes.
14. An act for merging the Sheffield Gas Consumers' Company in the Sheffield United Gaslight Company, and for other purposes.
15. An Act to authorise the Glossop Gas Company to raise money, and for other purposes.
16. An act to enable the South Eastern Railway Company to raise a further Sum of Money, and to create Preferential Stock, for the purpose of paying off their Mortgage Debt.
17. An act for making a Railway from the Midland Railway in the Parish of Cam in the County of Gloucester to the Town of Dursley.
18. An act to enable the Belfast and County Down Railway Company to extend their Railway in the County of Down.
19. An act to grant further Powers to "The Colchester, Stour Valley, Sudbury, and Halstead Railway Company.
20. An act to enable the Heywood Waterworks Company to extend their undertaking, and to increase their Capital.
21. An act for enabling the Grand Junction Waterworks Company to raise further Capital, and for other purposes.
22. An act to re-incorporate Price's Patent Candle Company, and to extend its Powers.
23. An act to enable the South Wales Mineral Railway Company to grant a lease of their Undertaking.
24. An act for enabling the Southwark and Vauxhall Water Company to raise additional Capital, and for other purposes.
25. An act to empower the Vale of Neath Railway Company to raise further Money for the Purposes of their Undertaking.
26. An act to incorporate the Woolwich Equitable Gas Company, and to enable them to raise further Money; and for other purposes.
27. An act to enable the Torquay Market Company to raise a further Sum of Money, to sell or lease their Undertaking, and for other purposes.
28. An act to extend the Great North of Scotland Railway from Huntly to Keith.
29. An act to enable the Chesterfield Waterworks and Gaslight Company to extend their Undertaking; and for other purposes.
30. An act for making a Railway from the Town of Jedburgh to the Kelso Branch of the North British Railway at or near the Roxburgh Station, and for other purposes.
31. An act for constructing a Market House, Market Place, and other Buildings for public Accommodation at Bangor in the County of Carnarvon, and for the better Regulation and Maintenance of the Markets there, and for other purposes.
32. An act for more effectually supplying with Gas the Parish of Rotherham and certain Places adjacent thereto in the West Riding of the county of York.
33. An act for better enabling the Medical, Invalid, and General Life Assurance Society to sue and be sued, and for other purposes with relation to the Society.
34. An act to enable the Company of Proprietors of the Birmingham Waterworks to construct new Waterworks; and for other purposes.
35. An act for extending the Powers of the Plymouth and Stonehouse Gaslight and Coke Company; and for other purposes.
36. An act for paving, draining, cleansing, lighting, and otherwise improving the District of Saint Mark, Surbiton, in the Parish of Kingston-upon-Thames in the County of Surrey; and for other purposes.
37. An act to incorporate the Stourbridge Gas Company, and to enable them to light with Gas the Town of Stourbridge in Worcestershire and other places.
38. An act to enable the East Indian Railway Company to issue and register Shares and Securities in India; and for other purposes in relation to such Company.
39. An act for authorising the Sale of the Uxbridge Burgage Lands, and directing the Application of the Proceeds thereof, and for other purposes.
40. An act to enable the Madras Railway Company to issue and register Shares and Securities in India, and for other purposes in relation to such Company.
41. An act to enable the Corporation of Newport in Monmouthshire to purchase the Interest of the Freemen in Newport Marshes, and for other purposes.
42. An act to amend "The Lancaster Waterworks and Gas Act, 1852," and to raise an additional Sum of Money for the purposes of the said Act; and for other purposes.
43. An act to amend the Provisions and extend the Limits of the Act relating to the Over Darwen Gaslight Company.
44. An act for enabling the Mayor, Aldermen, and Citizens of the City of Manchester to make a new Street from Manchester across the River Irwell into Salford; and authorising arrangements with the Corporation of Salford in reference thereto; and for other purposes.
45. An act to extend the Limits of the Borough of Kingston-upon-Thames, and to provide for the better paving, lighting, draining, and otherwise improving the said borough; and for other purposes.
46. An act for extending the Powers of The Plymouth Great Western Dock Company, and for other purposes.
47. An act to authorise the Mayor, Aldermen, and Burgesses of the Borough of Oldham to construct additional Waterworks; and for other purposes.

48. An Act to confer further Powers on the Birmingham Gaslight and Coke Company.

49. An act for repealing an Act called "The Hartlepool Gas and Waterworks Act, 1849," and granting other Powers in lieu thereof; and for enabling the Hartlepool Gas and Water Company to raise further Money, and for other purposes; the Short Title of which is "The Hartlepool Gas and Waterworks Act, 1855."

50. An act to consolidate and amend the Acts relating to the Llynvi Valley Railway Company; to enable them to construct a new Railway from Llangonoyd to Bridgend, and to extend their present Line from Foce Toll House to Saint Bride's Minor, to abandon Parts of their existing and authorised Lines, to dissolve the Bridgend Railway Company, and to abandon their Railway; and for other purposes.

51. An act for further and more effectually repairing and maintaining the Bridge over the River Tweed at or near the Town of Kelso in the County of Roxburgh.

52. An act to amend "The St. George Harbour Act, 1853."

53. An act to enable the Ulster Railway Company to make a Railway from Armagh to Monaghan, and to enlarge their Station at Belfast; and for other purposes.

54. An act for enabling the Mayor, Aldermen, and Burgesses of Londonderry to raise a further Sum of Money; and for other purposes.

55. An act to incorporate "The Kilmarnock Gaslight Company," established to supply with Gas the Town of Kilmarnock, and the Parishes of Kilmarnock and Riccarton, and places therein, all in the County of Ayr.

56. An act for consolidating into One Act and amending the Provisions of the several Acts relating to the Dundee and Perth and Aberdeen Railway Junction Company; and for enabling the Company to raise Money for the Payment of Debts; and for other purposes.

57. An act for making a Railway from the Great North of Scotland Railway to Turriff in the County of Aberdeen.

58. An act to authorise certain Arrangements with respect to the Capital of the Swansea Dock Company.

59. An act for extending the Time for the Completion of the Cornwall Railway and Works; and for making further Provisions as to the Share Capital of the Cornwall Railway Company; and for other purposes.

60. An act to enable the Swansea Vale Railway Company to extend their Railway, and to maintain and work the same as a Passenger Railway, and for other purposes connected therewith.

61. An act to repeal the Act relating to the Leominster and Ledbury Turnpike Trust, and to make other Provisions in lieu thereof.

62. An act to enable the Salisbury and Yeovil Railway Company to make a Deviation in the Line of their Railway; and for other purposes.

63. An act to enlarge some of the Powers of

the Acts relating to the Bristol and Exeter Railway Company; and to enable such Company to raise further Sums of Money, to acquire additional Lands, to lease the Somerset Central Railway, to hold additional Shares in the Exeter and Crediton Railway; and for other purposes.

64. An act to incorporate the Hyde Gas Company, and to grant more effectual Powers for supplying with Gas the several Townships of Hyde, Werneth, Bredbury, Romiley, Newton, and Godley in the County of Chester.

65. An act for making a Railway from and out of the Great North of Scotland Railway in the Parish of Inverury to the Town of Old Meldrum, all in the County of Aberdeen; and for other purposes.

66. An act for amending the several Acts relating to the Liverpool Corporation Waterworks, and for authorising Deviations and the Construction of Works; and for other purposes.

67. An act for amending "The Commercial Roads Act, 1828," and "The Commercial Roads Continuation Act 1849," and for other purposes.

68. An act for repairing the Road from the Town of Kingston-upon-Hull to the Western Boundary of the Parish of Hessele in the East Riding of the County of York.

69. An act for making a Railway from the Oxford Branch of the Great Western Railway to Abingdon.

70. An act for enabling the Mayor, Aldermen, and Burgesses of the Borough of Ashton-under-Lyne in the County of Lancaster to purchase and maintain Waterworks; and for other purposes.

71. An act to repeal the Act relating to the Nottingham and Loughborough Turnpike Road, and to make other Provisions in lieu thereof.

72. An act for establishing and maintaining an efficient System of Police for the Royal Burgh of Renfrew, for improving the said Burgh, and for other purposes in relation thereto.

73. An act to enable the Waterford and Limerick Railway Company to raise further Money; and for other purposes.

74. An act for the Improvement of the Town of Saint Helen's, and for other purposes.

75. An act to alter and extend the Line of the Cromford and High Peak Railway, and to amend and consolidate the Provisions of the Acts relating thereto.

76. An act for making a Railway from the Waterford and Limerick Railway at Killoan to Castleconnell, to be called "The Limerick and Castleconnell Railway;" and for other purposes.

77. An act to extend the Limits of the Newcastle-under-Lyne Gas Light Company's Act for the supply of Gas, and to authorise the raising of a further Sum of Money, and for other purposes.

78. An act to increase the borrowing Powers of the Limerick and Foynes Railway Company.

79. An act to consolidate and amend the Acts relating to the Maryport and Carlisle Railway; to authorise the Company to improve their existing Railway; to make new Branches, Stations, and other Additions to their Works; to raise further Moneys; and for other purposes.

80. An act for better lighting with Gas the Town and Borough of Newport, and the Neighbourhood thereof, in the County of Monmouth.

81. An act for more effectually supplying with Gas the Town of Weston-super-Mare in the County of Somerset.

82. An act to renew the Term and continue the Powers of an Act passed in the 8th Year of the Reign of his Majesty King George the Fourth, intituled "An Act for repairing the Road from Alford to Boston, and from thence to Cowbridge in the Township of Frithville, in the County of Lincoln."

83. An act to repeal so much of the Act relating to the Wigan and Preston Roads as relates to the District of the said Roads North of Yarrow, and to make other Provisions in lieu thereof.

84. An act to alter and amend "The Lands Improvement Company's Act, 1853."

85. An act to renew the Term and continue the Powers of an Act passed in the 1st Year of the Reign of his Majesty King George the Fourth, intituled "An act to continue the Term and alter and enlarge the Powers of an Act of the 40th Year of his late Majesty's Reign, for repairing the Road leading from the Turnpike Road in Witney to the Road on Swerford Heath, and the Road leading from the Road from Woodstock to Birmingham through Charlbury to the Road from Chipping Norton to Burford, all in the County of Oxford.

86. An act for making a Railway from Oswestry in the County of Salop to Welchpool and Newtown in the County of Montgomery.

87. An act for repairing, widening, and maintaining several Roads in the Counties of Dorset and Devon leading to and from the Borough of Lyme Regis, and from the Turnpike Road on Raymond's Hill to the Turnpike Road at the Three Ashes in the Parish of Crewkerne in the County of Somerset.

88. An act for making a Railway from the Town of Dundalk in the County of Louth to the Town of Black Rock in the said County.

89. An act for the better Supply of the City of Gloucester and the Neighbourhood thereof with Water; and for other purposes.

90. An act for enabling the London and Blackwall Railway Company to widen certain Portions of their Railways, and for amending some of the Provisions of the Acts relating to such Railways.

91. An act for enabling the Manchester, Sheffield, and Lincolnshire Railway Company to make a Branch Railway to Lincoln, and for other purposes.

92. An act for continuing the Term of the Nottingham and Newhaven Turnpike Road and Districts Act, and for other purposes.

93. An act for extending the Powers of the Warrington Waterworks Company, and for other purposes.

94. An act to amend the East Kent Railway Act, 1853.

95. An act to authorise the Company of Proprietors of the Regent's Canal to purchase the Hertford Union Canal; and for other purposes.

96. An act to enable the Caledonian Railway Company to raise a further sum of Money.

97. An act to consolidate and amend the Acts relating to the Glasgow and South-Western Railway, and for other purposes.

98. An act to consolidate and amend the Acts relating to the South Wales Railway Company, and to authorise the Construction of new Works, and Alterations of existing Works, and for other purposes.

99. An act to authorise Improvements in the Borough of Newcastle-upon-Tyne.

100. An act for the Improvement of the Town of Newton in Mackerfield and Neighbourhood in the County of Lancaster.

101. An act to enable the Cork and Youghal Railway Company to make a Branch Railway to Queenstown, and to make certain Deviations in and an Extension of their Line; and for other purposes.

102. An act to alter certain portions of the Metropolitan Railway, and to amend the Provisions of the Act relating thereto.

103. An act to amend and extend the Provisions of the Act relating to the Gomersal and Dewsbury Turnpike Roads, and to create a further Term therein; and for other purposes.

104. An act to repeal certain Acts relating to the Basingstoke, Stockbridge, and Lobcomb Corner Turnpike Roads, and to make other Provisions in lieu thereof.

105. An act to enable the Dundalk and Enniskillen Railway Company to construct Extension Railways; and for other purposes.

106. An act to repeal the Acts relating to the Road from Lightpill to Birdlip, and make other provisions in lieu thereof.

107. An act to repeal the Act relating to the Peterborough and Wellingborough Turnpike Road, and to make other Provisions in lieu thereof.

108. An act to repeal the Act for making and maintaining a Turnpike Road from Caincross through Stroud over Rodborough and Minchinhampton Commons to the Town of Minchinhampton, with some Branches therefrom, all in the County of Gloucester, and to make other Provisions in lieu thereof.

109. An act to repeal an Act for making and maintaining certain Roads from the Town of Stroud and several other Places therein mentioned, all in the County of Gloucester, and to make other Provisions in lieu thereof.

110. An act to enable the Rhymney Railway Company to extend their Railway to the Taft Vale Railway, to construct Branch Railways, and for other purposes.

111. An act for continuing the Term and amending and extending the Provisions of the

Act relating to the First District of the Bridport Turnpike Roads in the County of Dorset.

112. An act for continuing the Term and amending and extending the Provisions of the Act relating to the Bridport and Broadwinsor Turnpike Roads.

113. An act for incorporating the Bombay, Baroda, and Central India Railway Company; and for other purposes connected therewith.

114. An act for extending the Time for the Purchase of Lands and for the Completion of a Railway from Chichester to Bognor.

115. An act for incorporating the Scinde Railway Company, and for other purposes connected therewith.

116. An act to enable the North Yorkshire and Cleveland Railway Company to make a Branch from their Railway to the Middlesbrough and Guisbrough Railway, and also a Branch to Whorlton, and other Works; and to alter and amend the Act relating to the said Company; and for other purposes.

117. An act to change the name of "The National Loan Fund Life Assurance Society" to the Name of "The International Life Assurance Society;" and to enable the said Society to sue and be sued in the Name of the Chairman or Secretary or any One Director of the said Society: and to give additional Powers to the said Society.

118. An act to authorise and empower the Magistrates and Council of the City of Glasgow to supply with Water the said City and Suburbs thereof, and Districts and Places adjacent; to purchase and acquire the Glasgow Waterworks, and the Gorbals Gravitation Waterworks; and to introduce an additional Supply of Water from Loch Katrine; and for other purposes.

119. An act for maintaining and improving the Harbour of Ayr, and for the better Regulation and Management thereof.

120. An act for making a Railway through Part of the Aberdare Valley in the County of Glamorgan, to join the Vale of Neath Railway.

121. An act for enabling the Company of Proprietors of the Birmingham Canal Navigations to make and maintain additional Canals, Works, and for other purposes.

122. An act for making Railways from the South Devon Railway to Exmouth, and to the Basin of the Exeter Canal, to be called The Exeter and Exmouth Railway.

123. An act to consolidate the Capital Stock of the Electric Telegraph Company and of the International Telegraph Company, and to grant further Powers to the Electric Telegraph Company.

124. An act to enable the Great Northern Railway Company further to increase their Capital; and for other purposes with relation to the same Company.

125. An act for incorporating the "Colonial Life Assurance Company;" for enabling the said Company to sue and to be sued, to take and hold property; and for other purposes relating to the said Company.

[To be continued.]

## NOTES OF THE WEEK.

### INSOLVENT DEBTORS' COURT.—ADMISSION.

MR. DENNEY renewed an application before the Chief Commissioner in London with respect to the admission of attorneys to practise in prison cases in the County Courts in the country, as well as protection cases. The learned counsel said it was a very important question, as by the Solicitors' Act attorneys were permitted to practise in all Courts. Mr. Denney apprehended that the learned Commissioner would have consulted his learned colleagues on the question, as it was the intention of his client to apply to the Court of Queen's Bench in order to have the matter settled.

His Honour declined to interfere, and any application might be made to this Court or elsewhere on the subject. From the *Morning Herald*.

### LAW APPOINTMENTS.

Thomas Hughes, Esq., of Ystrad, Denbigh, has been appointed Chairman of the Quarter Sessions of the county of Denbigh. This gentleman practised many years as a solicitor, and his election by a large majority of his brother magistrates forms a very gratifying testimonial of his worth and ability.

The Queen has been pleased to appoint Paul Ivy Sterling, Esq., to be a Puisne Judge of the Supreme Court of Ceylon.—From the *London Gazette* of 18th Sept.

Mr. John Henry Church, Solicitor, Colchester, has been appointed Clerk to the Burial Board of Wivenhoe, Essex.

Mr. John Ashton, Solicitor, has been appointed Election Auditor for Warrington.

Mr. Thomas Francis Meagher has been admitted an Attorney and Councillor in all the Courts in New York.

The Queen has been pleased to appoint Philip Francis Little, Esq., to be Attorney-General, and George Henry Emerson, Esq., to be Solicitor-General for the Island of Newfoundland.

Her Majesty has also been pleased to appoint George Henry Emerson, Esq., to be a Member of the Legislative Council of Newfoundland.—From the *London Gazette* of 2nd Oct.

### ELECTION OF LORD MAYOR, SHERIFFS, AND UNDER-SHERIFFS.

David Salomons, Esq., Barrister-at-Law, has been elected Lord Mayor of the city of London for the ensuing year. Mr. Salomons was called to the Bar by the Honourable Society of the Middle Temple, 4th May, 1849.

Alderman Kennedy and Alderman Rose have been elected Sheriffs of London and Middlesex for the ensuing year.

Mr. Sheriff Kennedy has appointed Mr. David Henry Stone, Solicitor, to be his Under-Sheriff, and Mr. Sheriff Rose has appointed Mr. James Anderson Rose, Solicitor, to be his Under-Sheriff.

ments, decrees, and orders shall extend to the Counties Palatine (s. 3).

The protection afforded to purchasers, mortgagees, and creditors by the 3 & 4 Vict. c. 82, is confined to judgments, decrees, orders, or rules binding by the 1 & 2 Vict. c. 110. It is now enacted that no judgment, decree, order, or rule which might be registered under the 1 & 2 Vict. c. 110, shall affect any lands, &c., until such a memorandum as in that Act mentioned shall be left with the proper officer of the proper Court (s. 4).

Doubts have arisen upon some of the provisions for the protection of purchasers, it is now therefore declared that the provision in the 3 & 4 Vict. c. 82, s. 2, shall extend as well to the Act therein referred to as to the 2 & 3 Vict. c. 11, s. 4, so that notice of any judgment, &c., not duly re-registered shall not avail against purchasers, &c. (s. 5).

Where by the 2 & 3 Vict. c. 11, re-registry of judgments, decrees, &c., is required within five years in order to bind purchasers, &c., it shall be deemed sufficient to bind such purchasers, &c., if such a memorandum as required in the first instance be again left with the Senior Master of the Common Pleas within five years before the execution of the conveyance, settlement, mortgage, &c., or as to creditors within five years before the right of such creditor accrued, *although more than five years* since the last previous registration (s. 6).

Where by the 22nd section of 1 & 2 Vict. c. 110, power is given to remove judgments, rules and orders obtained in Inferior Courts into the Superior Courts, or the Common Pleas at Lancaster, no such judgment, &c., shall bind any land, &c., unless after such removal it shall be registered (s. 7). But the Act does not extend to revive any judgment, &c. which shall be extinguished or barred (s. 8.).

The duties of the prothonotary are prescribed by the 9th section, and his fees are as follows: for every registration 3s. 6d.; for re-registration 1s., and for searches 1s. (s. 9).

The Bankrupt Law Consolidation Act, 1849, by section 123, provides that orders of the Court of Bankruptcy for the payment of the amount admitted shall have the effect of a judgment in the Superior Courts, and by section 249 that the Court may award costs, and that the like remedies may be had upon an order for costs; but the Act does not direct the registration of

such order. It is now enacted that no such order of the Court of Bankruptcy for the payment of money, or of costs, shall affect any lands, &c., as to purchasers, mortgagees, or creditors, unless it shall be registered (s. 10).

Great delay and expense are occasioned on purchases and mortgages in consequence of judgments, crown debts, &c., continuing to bind lands, &c., although *bond fide* paid off. It is therefore now enacted that where any legal or equitable estate or interest in any lands shall become vested in any person for valuable consideration, such lands shall not be taken in execution under any writ of elegit or other writ of execution, to be sued upon any judgment, &c., against any mortgagee who shall have been paid off, nor shall such lands, &c., be extended or liable to any process on behalf of the Crown in respect of any judgment, &c., where such mortgagee shall have been paid off (s. 11).

By the repeal of the 53 Geo. 3, c. 141, requiring the enrolment of life annuities or rent-charges, purchasers are no longer able to ascertain by search what annuities or rent-charges have been granted by vendors or others: it is therefore now enacted that any annuity or rent-charge granted after the passing of this Act, otherwise than by marriage for life or years, shall not affect any lands, &c., until a memorandum of the date of the deed, with the annual sum, &c., shall be left with the Senior Master of the Common Pleas, who shall enter the same in a book in alphabetical order (s. 12).

The *searches of the several Registers* by this and the recited Acts may be made by the parties themselves under proper regulations in the office (s. 13). The Act does not extend to the registration of annuities or rent charges by will (s. 14).

It is trusted that under the 13th section such regulations will be made as will prevent the abuse of the right of search by parties interested, and that strangers will not be allowed to make extracts from the registers for the purpose of publishing the names of the persons engaged in these transactions.

## II. INFANTS' MARRIAGE SETTLEMENTS.

Great inconveniences and disadvantages have arisen in consequence of persons who marry during minority being incapable of making binding settlements of their property. It is therefore enacted by the 18 & 19 Vict. c. 43, which received the Royal Assent on

2nd July last, that from the passing of the Act every infant in contemplation of his or her marriage, with the *sanction of the Court of Chancery*, may make a valid settlement, or contract for a settlement, of all or any part of his or her property, whether real or personal, and whether in possession, reversion, remainder, or expectancy. And every conveyance, appointment, and assignment of such real or personal estate, or contract, by such infant with the *approbation of the Court*, shall be valid and effectual; but the enactment is not to extend to powers of which it is expressly declared they shall not be exercised by an infant (s. 1).

In case any appointment under a power or disentailing assurance shall be executed by an infant tenant in tail and he or she shall die under age, such appointment or disentailing assurance shall become void (s. 2).

The sanction of the Court to such settlement or contract may be given on petition presented by the infant or guardian in a summary way without suit; and if there be no guardian, the Court may appoint one, and direct notice of the petition to be given to persons appearing to be interested in the property (s. 3).

The Act, however, does not apply to male infants under 20, nor females under 17 (s. 4).<sup>2</sup>

### III. LEASES OF LUNATICS' PROPERTY.

By the 16 & 17 Vict. c. 129, where a lunatic is entitled to land in fee or entail, or leasehold lands, and it appears to the Lord Chancellor to be beneficial that a lease should be made for encouraging the erection of buildings, repairs, &c., the Committee under the Lord Chancellor's order may make such leases, subject to such rents and covenants as the Lord Chancellor may direct. But it has been considered that the Lord Chancellor cannot empower the Committee of a lunatic *tenant in tail* to grant leases as extensively as was intended. It is therefore now enacted by the 18 Vict. c. 13, s. 1, that where a lunatic is entitled to land *in tail*, the Lord Chancellor may authorise the Committee to grant leases in like manner as if the lunatic had been seised of the lands in fee simple. And every person to whom the reversion shall belong may have the like remedies against the lessee as the lunatic or his Committee.<sup>3</sup>

### IV. SEWERS AND HOUSE DRAINAGE.

We call attention to the 18 Vict. c. 30,

extending the Law of Sewers, inasmuch as the large powers thereby conferred on the Metropolitan Commissioners of Sewers may materially affect the interests of the owners of houses in the metropolis.

The Commissioners are authorised to give notice to the owners or occupiers of messuages, tenements, and premises, of their intention to construct sewers, drains, and other works of improvement, whether temporary or permanent, and the Commissioners are to appoint a time and place for receiving objections in writing, from any party interested in such messuages, &c., and the Commissioners are to consider the objection, and if they execute the works are to ascertain the expenses, and divide them among the owners or occupiers, in such proportion as may be equitable, and the amount is to be paid by an improvement rate (s. 2).<sup>4</sup>

### V. PROPERTY AND INCOME TAX.

THE Income Tax Act (18 Vict. c. 20) imposes by the 1st section an additional rate of 2*d.* in the pound in respect of all property, profits, and gains, to be charged from the 5th April, 1855.

By the 2nd section, it is provided that where by the several Acts in force any less rate than 1*s.* 2*d.* in the pound is chargeable, then such rate shall bear the same proportion to 1*s.* 4*d.* as the rate now chargeable bears to 1*s.* 2*d.* Provided that any person entitled to relief on the ground that his total income, though amounting to 100*l.*, is less than 150*l.*, shall be relieved from so much of the duties as shall exceed 11½*d.* in the pound.

The duties imposed by this Act and the Act of the last Session are to continue during the present war, and until the 6th April after the expiration of a year from the ratification of a definitive treaty of peace (s. 4).<sup>5</sup>

### VI. INCLOSURE OF LAND.

The 18 & 19 Vict. c. 61, enacts that the several proposed inclosures mentioned in the Schedule shall be proceeded with. See the Act, p. 275, *ante*.

### VII. INCUMBERED ESTATES (IRELAND):

The 18 & 19 Vict. c. 73, enacts that all applications under the 12 & 13 Vict. c. 77; 15 & 16 Vict. c. 67, and 16 & 17 Vict. c. 64, may be made within three years from 28th July, 1853; and all orders and pro-

<sup>2</sup> See the Act, page 198, *ante*.

<sup>3</sup> See the Act, page 32, *ante*.

<sup>4</sup> See the Act, page 139, *ante*.

<sup>5</sup> See the Act, page 197, *ante*.



ceedings by the said Acts authorised, may be made and taken within the further period authorised by this Act. See the Act, p. 276, *ante*.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages :—

- Purchasers' Protection, 18 Vict. c. 15,—p. 5.
- Lunacy Regulation Act, c. 13,—p. 32.
- Commons' Inclosure, c. 14,—p. 32.
- Newspaper Stamp Duties, c. 27,—p. 137.
- Sewers (House Drainage), c. 30,—p. 139.
- House of Commons' Proceedings, c. 33,—p. 139.
- Income Tax, c. 20,—p. 197.
- Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.
- Administration of Oaths Abroad, 18 & 19 Vict. c. 42,—p. 175.
- Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.
- Common Law Pleadings, c. 26,—p. 176.
- Infants' Marriage Settlements, c. 33,—p. 198.
- Palatine of Lancaster Trials, c. 45,—p. 241.
- Bills of Exchange and Promissory Notes, c. 67,—p. 256.
- Cinque Ports, c. 48,—p. 258.
- Commons Inclosure (No. 2), c. 61,—p. 275.
- Incumbered Estates Acts (Ireland) Continuance, c. 73,—p. 276.
- Places of Religious Worship Registration, c. 81,—p. 276.
- Friendly Societies, c. 63,—pp. 296, 319, 342.
- Limited Liability, c. 133,—p. 316.
- Despatch of Business, Court of Chancery, c. 134,—p. 338.
- Charitable Trusts, 1855, c. 124,—p. 358.
- Crown Suits, c. 90,—p. 376.
- Criminal Justice, c. 126,—p. 377.
- Merchant Shipping Amendment Act, c. 91,—p. 395.
- Bills of Lading, c. 111,—p. 398.
- Youthful Offenders, c. 97,—p. 399.
- Metropolitan Buildings' Act, 1855, c. 122,—pp. 415, 436.
- Metropolis Local Management Act, c. 120,—p. 456.

### METROPOLIS LOCAL MANAGEMENT ACT.

18 & 19 VICT. c. 120.

The preamble of this Act states, "it is expedient that provision should be made for the better management of the Metropolis in respect of *Sewerage and Drainage*, and the *Paving, Lighting, and Improvements* thereof."

The Act consists of 251 sections, besides various Schedules. The following is an analysis of the Act :—

### *Vestries and Auditors, Election of.*

Repeal of 1 & 2 Wm. 4, c. 60, as to parishes in Schedules (A.) and (B.); section 1.

Vestries in parishes in Schedules (A.) and (B.) to consist of not less than 18 or more than 120 persons qualified and elected as after provided; s. 2.

Parishes with more than 2,000 rated householders to be divided into wards; s. 3.

Secretary of State to appoint persons to set out the wards; s. 4.

In case the relative amounts of population of wards vary in any future census, numbers of vestrymen assigned to the several wards may be altered; s. 5.

Qualification of vestrymen rated at 40*l.*; s. 6.

First election of vestrymen under this Act; s. 7.

The full number of vestrymen to be chosen at first election, and existing vestries superseded; s. 8.

Term of office of elected vestrymen; one-third going out yearly; s. 9.

Vacancies to be filled up at annual elections; s. 10.

Auditors of accounts to be chosen; s. 11.

Term of office of auditors; s. 12.

Notice of elections; s. 13.

Churchwardens to appoint persons to preside at ward elections; s. 14.

Rate collectors to assist at the elections; s. 15.

Form of proceeding at elections; s. 16.

A ballot may be demanded; s. 17.

Duty of inspectors of votes; s. 18.

Provision for case of equality of votes; s. 19.

If vestry of any parish be reduced below two-thirds, vacancies to be filled up; s. 20.

Penalty for forging or falsifying any voting paper, or obstructing the election; s. 21.

A list to be published of vestrymen and auditors chosen by parishioners; s. 22.

Penalty on inspector for making incorrect return; s. 23.

Vestry to pay expenses of taking poll, &c.; s. 24.

Provisions for places having no churchwardens; s. 25.

How notices and lists to be published; s. 26.

Churchwardens and other parish officers not complying with Act guilty of misdemeanor; s. 27.

Quorum of vestries; s. 28.

Meetings not to be holden in the Church; s. 29.

Meeting to elect a chairman; s. 30.

### *Districts and District Boards.*

Parishes in Schedule (B.) to be united, and form districts, and district boards constituted; s. 31.

Vestries to elect members of district boards; s. 32.

In case the relative numbers of inhabited houses in parishes in any district vary on any future census, numbers of members to be returned to district board may be altered; s. 33.

Term of office of members of district boards; one-third to go out yearly; s. 34.

Annual elections to supply vacancies by expiration of term of office; s. 35.

Provision as to parishes not electing as many as three members of a district board; s. 36.

Provision as to casual vacancies; s. 37.

Powers of district boards to be exercised at meetings, there being not less than seven members present; s. 38.

Ordinary meetings of district boards; s. 39.

Special meetings of district boards; s. 40.

Chairman to be elected at meeting of board; s. 41.

Incorporation of vestries and district boards; s. 42.

### *Metropolitan Board of Works.*

Metropolitan Board of Works constituted and incorporated; s. 43.

Three members of Metropolitan Board to be elected for the city; s. 44.

Vestries of single parishes and district boards to elect members of the Metropolitan Board; s. 45.

Boards for districts for Plumstead and Lewisham united for electing a member of Metropolitan Board; s. 46.

The parish of Rotherhithe and district of St. Olave united for electing a member of the Metropolitan Board of Works; s. 47.

Term of office of elected members of Metropolitan Board; one-third to go out annually; s. 48.

Elected members of Metropolitan Board to elect a chairman; s. 49.

Appointment of Chairman on any vacancy; s. 50.

Powers of Metropolitan Board to be exercised at meetings, there being not less than nine members present; s. 51.

Meetings of the Metropolitan Board; s. 52.

Chairman to preside at meetings, and during vacancy of his office, or in his absence, a temporary Chairman to be chosen; s. 53.

### *Metropolitan and District Boards and Vestries, Constitution, &c.*

Disqualifications of members of Metropolitan Board and district boards and vestries of parishes in Schedule (A.) and (B.) and of auditors; s. 54.

Members of Metropolitan and District boards, and of vestries of parishes in Schedule (A.) or (B.), may resign; s. 55.

Retiring members of Metropolitan Boards and vestries may be re-elected; s. 56.

No resolution of Metropolitan or any District Board, or of any vestry, to be revoked at a subsequent meeting, unless under certain circumstances; s. 57.

Committees may be appointed; s. 58.

Powers of committee; s. 59.

Minutes of proceedings of Metropolitan and District Boards and vestries to be entered; s. 60.

Books to be open to inspection; s. 61.

Metropolitan Board and District Boards and vestries to appoint officers; s. 62.

Clerk and treasurer not to be the same person; s. 63.

Penalty on officers, &c., being interested in contracts or exacting fees; s. 64.

Officers, &c., intrusted with money to give security for duly accounting for the same. If officer fail to render account, &c., justices may commit offender to prison; s. 65.

Metropolitan and District Boards and vestries to provide proper offices, and to cause daily attendance to be given; s. 66.

### *Vestries and District Boards.—Powers and Duties.*

"Vestry" in following provisions to mean vestry of a parish in Schedule (A.); s. 67.

Sewers (except main sewers) vested in vestries and district boards; s. 68.

Vestries and district boards to repair, &c., all sewers vested in them, and from time to time to construct new ones, &c.; s. 69.

Power to vestries and district boards to do works of improvement in sewers, &c., the expense of which to be divided between the party liable and the parish or district; s. 70.

Gullyholes, &c. to be trapped; s. 71.

Vestries and district boards to cause sewers, &c., to be cleansed, &c.; s. 72.

Vestry or district board in certain cases may compel owners, &c., of houses to construct drains into the common sewer. Penalty on owner, &c., for neglect; s. 73.

Provision for combined drainage of blocks of houses; s. 74.

No house to be built without drains constructed to the satisfaction of the vestry or district board; s. 75.

Notice of buildings to be given to the vestry or district board before commencing the same; s. 76.

Drains may be branched into any sewers constructed by Metropolitan Board or any vestry or district board under certain regulations; s. 77.

Power to Metropolitan Board or vestry or district board to branch private drains into sewers, at the expense of the party to whom they belong; s. 78.

Vestry or district board may agree to make house drains at the expense of owners or occupiers; s. 79.

Vestry or district board may order a contribution towards construction of sewers in certain cases; s. 80.

Penalty on erecting houses without proper waterclosets, &c. All houses to have proper waterclosets &c.; s. 81.

Power for vestries and district boards to authorise inspection of drains, privies, and cesspools; s. 82.

Penalty on persons improperly making or altering drains; s. 83.

Where no default found, expenses to be paid by vestry or board; s. 84.

Vestry or district board to cause drains, &c., to be put into proper conditions, &c., where necessary; s. 85.

Vestry and district board to cause offensive ditches, drains, &c., to be cleansed or covered. Where works interfere with any ancient mill, &c., compensation to be made, or rights therein purchased; s. 86.

Power to vestries and district boards to fill

up ditches by the side of roads, and substitute pipes; s. 87.

Power to vestries and district boards to provide public conveniences; s. 88.

Vestries and district boards may transfer their powers as to sewerage to the Metropolitan Board of Works; s. 89.

All powers relating to paving, &c., to be vested in vestries and district boards; s. 90.

Saving as to Baths and Wash-houses, Metropolitan Burials, and Markets and Charitable Trusts Acts; s. 91.

Expenses incurred under existing powers relating to paving, &c., to be deemed expenses incurred in execution of this Act; s. 92.

Transfer of property; s. 93.

Existing contracts, &c., to remain valid; s. 94.

Existing commissioners, &c., under local Acts, continued in office until commencement of this Act; s. 95.

Powers and duties of surveyors of highways, and property vested in them, transferred to vestries and district boards; s. 96.

Saving of rates already made; s. 97.

Vestry or district board to pave streets; s. 98.

Owners possessing freshhold of Courts, &c., to pave the same; s. 99.

Owners of courts to drain them, and keep the pavement, &c., in repair. Penalty on owners for neglect; s. 100.

Vaults, &c., under streets not to be made without the consent of the vestry or board; s. 101.

Vaults, &c., under streets to be repaired by owners or occupiers; s. 102.

Provision as to occupation of underground rooms; s. 103.

District surveyors may be empowered to enter underground rooms and cellars; s. 104.

Provisions for paving new streets; s. 105.

Vestry or board may declare their intention of repairing any street, not being a highway; s. 106.

Act not to authorise the making any thoroughfare without the consent of the proprietor of the estate; s. 107.

Vestries and district boards may place fences, &c., to footways; s. 108.

Notice to be given by companies to vestries and district boards when pavement, &c., is required to be taken up; s. 109.

Streets not to be broken up, except under the superintendence of vestry or board. Streets broken up to be reinstated without delay; s. 110.

Penalty on persons taking up pavement neglecting to reinstate them, and to place lights during the night-time to prevent accidents; s. 111.

Vestry or district board to direct pavements injured by water or gas pipes to be repaired by the company to which they belong. Penalty for neglect; s. 112.

Company opening the ground to repair a pipe discovered to belong to another company, to give notice to such company, and to be reimbursed expenses; s. 113.

Power to vestry or district board to reinstate pavement, and charge the expenses to the parties; s. 114.

Power for vestry or district board to contract with company for restoring pavements; s. 115.

Watering of streets; s. 116.

Vestry or district board to cause footways to be cleansed; s. 117.

Vestries and district boards may appoint and pay crossing sweepers; s. 118.

Owners, &c., to remove future projections on notice from vestry or district board. Penalty for neglect; s. 119.

Vestry or district board may remove existing projections, and make compensation for the same; s. 120.

Hoards to be erected during repairs. Penalty on not erecting hoards; s. 121.

No hoard to be erected without licence from vestry or district board; s. 122.

If hoard be erected or materials be deposited in any manner otherwise than to the satisfaction of the vestry or district board, the same may be removed; s. 123.

Providing against accidents in laying out new streets, &c.; s. 124.

Vestries and district boards to appoint scavengers; s. 125.

Penalty for obstructing scavengers in performance of their duty; s. 126.

Refuse collected to be vested in vestry or district board, who may dispose of the same towards defraying their expenses; s. 127.

Owners or occupiers to pay scavengers for removal of refuse of trades; s. 128.

Dispute as to what is refuse of trade, &c., to be determined by justices; s. 129.

Vestries and district boards to cause streets to be lighted; s. 130.

No slaughter-house to be licensed under the 14 & 15 Vict. c. 61, without notice to vestry or district board; s. 131.

Vestries and district boards to appoint medical officers of health; s. 132.

Inspectors of Nuisances; s. 133.

Vestries and district boards to be the local authorities to execute the Nuisances Removal Acts; s. 134.

#### *Metropolitan Board of Works.—Powers and Duties.*

Main sewers vested in the Metropolitan Board of Works, and power to such board to make sewers; s. 135.

Before works for intercepting the sewage are commenced, plans and estimate to be submitted to Commissioners of Works; s. 136.

Metropolitan Board may declare sewers to be main sewers, and take under their jurisdiction sewerage matters under jurisdiction of vestries and district boards; s. 137.

Metropolitan Board to make orders for controlling vestries and district boards in construction of sewers, &c.; s. 138.

Metropolitan Board may direct appointments to be made for two parishes or districts jointly; s. 139.

Or may place a street in different parishes

under the management of one vestry, or part of a parish under the management of vestry of adjoining parish; s. 140.

Metropolitan Board to regulate naming of streets and numbering of houses; s. 141.

Register to be kept of alterations in names of streets; s. 142.

Buildings not to be brought beyond line of street; s. 143.

Power to Metropolitan Board to make improvements; s. 144.

#### *Transfer of Powers of Metropolitan Commissioners of Sewers.*

Powers of Metropolitan Commissioners of Sewers to cease; s. 145.

Actions, &c., not to abate, but to continue for or against Metropolitan Board of Works; s. 146.

Rates made by Metropolitan Commissioners of Sewers to be recoverable under this Act; s. 147.

Property vested in Metropolitan Commissioners of Sewers (except sewers transferred to vestries and district boards) transferred to the Metropolitan Board of Works; s. 148.

#### *Metropolitan Board of Works and Vestries and District Boards, their common powers.*

Power to boards and vestries to enter into contracts for carrying Act into execution. Power to compound for penalties in respect of breach of contracts; s. 149.

Power to boards and vestries to purchase lands, &c., for the purposes of this Act; s. 150.

Incorporation of Lands Clauses Act; s. 151. Lands not to be taken compulsorily, except by Metropolitan Board, with consent of Secretary of State; s. 152.

Previous notice to be given; s. 153.

Power to dispose of lands or property not wanted; s. 154.

Owners of land may on sale reserve a right of pre-emption; s. 155.

Penalty for withholding property transferred to Metropolitan Board, or any vestry or district board; s. 156.

Regulations as to breaking up turnpike roads; s. 157.

#### *Vestries and District Boards' expenses.*

How sums to be raised by vestries and district boards for defraying expenses; s. 158.

Vestries and boards may exempt parts not benefited by expenditure from payment; s. 159.

Provisions for cases where a part of a parish is placed under the management of the vestry or board of adjoining parish or district; s. 160.

Overseers to collect the rate in the same manner as the poor-rate; s. 161.

Public buildings and void spaces now rateable (except churches and burial grounds) to continue rateable; s. 162.

Land to be rated to the Sewers rate at one-fourth part of its annual value; s. 163.

Existing exemptions in respect of sewers rate to be allowed; s. 164.

Existing exemptions of land from lighting rates to be allowed; s. 165.

Overseers on nonpayment of the rate shall be distrained upon; and in default of sufficient distress the arrears may be levied on the parish; s. 166.

Provision for cases where the vestry of any parish in Schedule (A.) make the poor rate; s. 167.

Special persons may be appointed to levy rates in certain cases; s. 168.

Provision for deduction by tenants of sewers rate; s. 169.

#### *Metropolitan Board, expenses of.*

Sums to be assessed upon the city and other parts of the metropolis by Metropolitan Board for defraying expenses; s. 170.

Right of inspecting county rate; s. 171.

Payment to be obtained from the city and from parishes by precepts to the chamberlain of the city, and to vestries and district boards; s. 172.

Payment of sums assessed upon the city; s. 173.

Payment by vestries and district boards of sums assessed by Metropolitan Board; s. 174.

Provision for assessing and levying rates in places where there is no poor rate. Mode of making the assessment. Allowance to assessors; s. 175.

Places in Schedule (C.) not now under rating for sewers not to be rated except for intercepting sewers; s. 176.

When assessment is made, notice thereof to be given, and all persons included in the assessment to have liberty to inspect it, &c. Penalty for refusing such inspection; s. 177.

Collection of the rate charged in such assessment; s. 178.

Appeal against assessment. The assessment may be altered to relieve the appellant, without altering any other part of it; s. 179.

#### *Paving, &c. Boards and Sewers Commissioners' Liabilities.*

Provision for discharging existing liabilities under local Acts relating to paving, &c.; s. 180.

Provision for payment of liabilities of Metropolitan Commissioners of Sewers; s. 181.

Where expenses have been incurred by the Metropolitan Commissioners of Sewers which may now be defrayed by improvement rates, or as charges for default, such rates, &c., may be levied by the Metropolitan Board; s. 182.

#### *Metropolitan and District Boards and Vestries, Borrowing Powers.*

Power to boards and vestries to borrow money on mortgage. No priority amongst mortgages; s. 183.

Public Works Loan Commission, under 14 & 15 Vict. c. 23, may make advances; s. 184.

Form of mortgage. Register of mortgages; s. 185.

Repayment of money borrowed at a time agreed upon. Interest on mortgages to be paid half-yearly. As to repayment of money borrowed when no time has been agreed upon.

Interest to cease on expiration of notice to pay off a mortgage debt; s. 186.

Power to borrow to pay off existing securities; s. 187.

Payment of principal and interest may be enforced by the appointment of a receiver; s. 188.

Transfer of mortgages. Register of transfers; s. 189.

Sinking fund to be formed for paying off mortgages; s. 190.

Mode of paying off mortgages; s. 191.

#### *Audit of Accounts.*

Accounts of Metropolitan Board, district boards, and vestries, to be balanced up to the end of each year; s. 192.

Auditor of accounts of Metropolitan Board to be appointed by Secretary of State, and remunerated by the board; s. 193.

Auditors to be elected annually to the district boards; s. 194.

Audit of accounts; s. 195.

Abstract of accounts to be made; s. 196.

Accounts of other parochial boards to be audited by the auditors elected under this Act; s. 197.

#### *Annual Reports.*

Annual reports by vestries and district boards; s. 198.

Vestry to make out and publish yearly a list of estates, charities, and bequests, &c., with the application thereof; s. 199.

Annual report of Metropolitan Board of Works; s. 200.

Reports, &c., of Metropolitan Board to be laid before Parliament; s. 201.

#### *Bye-Laws.*

Power to Metropolitan Board of Works to make bye-laws. Penalty for breach of bye-laws. Power to justices to remit penalties; s. 202.

Publication of bye-laws. Evidence of bye-laws; s. 203.

#### *Protection of Property of Metropolitan and District Boards and Vestries.*

Buildings not to be made over sewers without consent; s. 204.

Penalty on persons sweeping dirt into sewers; s. 205.

Penalty for willfully damaging, &c., lamps, or other property of vestries or district boards, or of the Metropolitan Board; s. 206.

Persons carelessly or accidentally damaging lamps, &c., to make satisfaction; s. 207.

Penalty on interrupting workmen, &c., in execution of duties; s. 208.

Penalty upon occupiers obstructing execution of works, or not disclosing owners' name; s. 209.

Savings and provisions in local Acts applicable to Commissioners of Sewers to apply to Metropolitan and District Boards and vestries; s. 210.

#### *Appeals.*

Power to appeal against orders and acts of

vestries and district boards in relation to construction of works; s. 211.

Metropolitan Board to appoint a Committee for hearing appeals; s. 112.

#### *Retiring Allowances and Compensations.*

Power to grant retiring allowances to persons employed under Metropolitan Commissioners of Sewers; s. 213.

Compensation to officers of paving boards; s. 214.

#### *Miscellaneous Clauses.*

Where two or more persons are to do any act or pay any sum of money, vestry or district board may apportion the same; s. 215.

Powers to vestries and district boards to spread repayment of expenses over a period not exceeding 20 years; s. 216.

Occupiers to pay expenses for which owners are liable, and to be reimbursed out of the rent; s. 217.

Occupier not to be required to pay more than the amount of rent owing by him; s. 218.

Agreements between landlord and tenant not to be affected; s. 219.

Service of notice, &c., on Metropolitan and District Boards and vestries; s. 220.

As to service of notices on owners and occupiers and other persons; s. 221.

Authentication of documents; s. 222.

Proof of debts in bankruptcy; s. 223.

Tender of amends; s. 224.

Compensation, damage, and expenses, how to be ascertained and recovered; s. 225.

Method of proceeding before justices in questions of damages, &c.; s. 226.

Recovery of penalties; 11 & 12 Vict. c. 43; s. 227.

Damages to be made good in addition to penalty; s. 228.

Transient offenders; s. 229.

Proceedings not to be quashed for want of form; s. 230.

Parties allowed to appeal to Quarter Sessions, on giving security; s. 231.

Court to make such order as they think reasonable; s. 232.

Penalties to be sued for within six months; s. 233.

Application of penalties; s. 234.

#### *Special Provisions and Savings.*

Provision for joint action of vestries and elections out of vestries under local Act; s. 235.

Agreement between the London and North-western Railway Company and certain Paving Commissioners confirmed; s. 236.

Special provision as to Ely Place and Ely Mews; s. 237.

Special provision as to Woolwich; s. 238.

Special provision as to gardens in squares, &c.; s. 239.

Saving of powers and property of Commissioners under "The Crown Estate Paving Act, 1851;" s. 240.

Saving rights of Commissioners of Works s. 241.

Saving of powers of Commissioners of

Sewers of the City over any such parts of any parishes in Schedule (B.) as are in the city; s. 242.

Saving the rights of the Metropolitan Sewage Manure Company; s. 243.

Saving as to turnpike roads; 244.

Saving for Metropolitan Police Commissioners; s. 245.

Act not to prejudice any dispute between Battersea and Penge; s. 246.

Repeal of Acts inconsistent with this Act; s. 247.

In case of conflict with the provisions of this Act, provisions of local Acts may be varied by Order in Council, on petition of boards or vestries; s. 248.

*Power to extend Act to adjoining Parishes.*

Act may be extended by Order in Council to parishes adjoining the metropolis not having less than 750 ratepayers; s. 249.

The Act concludes with an interpretation of terms, and fixes 1st January, 1856, for the commencement of its operation.

A very useful edition of the Act, with notes, an abstract of its leading provisions, and such portions of the Metropolitan Building Act, 1855, as confer extra powers on the Metropolitan Board of Works, has been compiled by James J. Scott, Esq., Barrister-at-Law.<sup>1</sup>

## RULES OF FRIENDLY SOCIETIES.

### INSTRUCTIONS OF THE REGISTRAR.

MR. TIDD PRATT, the Registrar of these Societies in England, has prepared Instructions for framing the Rules of Friendly Societies under the 18 & 19 Vict. c. 63; and we now lay them before our readers:—

"By the Act 18 & 19 Vict. c. 63 (July 23, 1855), intituled 'AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO FRIENDLY SOCIETIES,' (commencing 2nd day of August, 1855,) *all the previous Acts relating to those Societies are repealed*; and any number of persons may form and establish a friendly society, for the purpose of raising by voluntary subscriptions of the members thereof, with or without the aid of donations, a fund for any of the following objects; (that is to say,)

"1. For insuring a sum of money to be paid on the birth of a member's child, or on the death of a member, or for the FUNERAL EXPENSES OF THE WIFE OR CHILD OF A MEMBER:

"2. For the relief or maintenance of the members, their husbands, wives, children, brothers or sisters, nephews or nieces, in

old age, sickness, or widowhood, or the endowment of members or nominees of members at any age:

"3. For any purpose which shall be authorised by one of her Majesty's principal Secretaries of State, or in Scotland by the Lord Advocate, as a purpose to which the powers and facilities of this Act ought to be extended:

Provided that no member shall subscribe or contract for an annuity exceeding 30*l.* per annum, or a sum payable on death, or on any other contingency, exceeding TWO HUNDRED POUNDS:

"And if such persons so intending to form and establish such society shall transmit rules for the government, guidance, and regulation of the same to the registrar, and shall obtain his certificate that the same are in conformity with law, then the said society shall be deemed to be fully formed and established from the date of the said certificate; s. 9.

"In any society in which a sum of money may be insured payable on the death of a child under 10 years of age, it shall not be lawful to pay any sum for the *funeral expenses* of such child, except upon production of a copy of the entry in the register of deaths, signed by the registrar of the district in which the child shall have died; and if such entry shall not state that the cause of death has been certified by a qualified medical practitioner, or by a coroner, a certificate signed by a qualified medical practitioner, stating the probable cause of death, shall be required, and it shall not be lawful in that case to pay any sum without such certificate; and no trustee or officer of any society, upon an insurance of a sum payable for the *funeral expenses* of such child made after the passing of this Act, shall knowingly pay a sum which shall raise the whole amount receivable from one or more than one society for the *funeral expenses* of a child under the age of five years, to a sum exceeding 6*l.*, or of a child between five and ten years to a sum exceeding 10*l.*; and any such trustee or officer who shall make any such payment otherwise than as aforesaid, or who shall pay any sum without endorsing the amount which he shall pay on the back or at the foot of the copy of entry signed by the said registrar, he shall be liable to a penalty not exceeding 5*l.* for every such offence, upon conviction thereof before two justices of the county or borough in which such death shall have taken place: The said registrar shall be entitled to receive, upon delivery of such copy of entry, for the purpose of receiving money from a friendly society, a fee of 1*s.*, and it shall not be lawful for him to deliver more than one such copy for such purpose, except by the order of a justice of the peace; s. 10.

"Before any friendly society shall be established, the persons intending to establish the same shall agree upon and frame a set of rules, for the regulation, government, and management of such society: and in such rules they

<sup>1</sup> Published by Knight & Co., 90, Fleet Street.

may, amongst other things, make provision for appointing a general committee of management of such society, and delegating to such committee all or any of the powers given by this Act to the members of friendly societies formed or established under or by virtue of the same; and such rules shall set forth,

- "1. The name of the society and place of meeting for the business of the society :
- "2. The whole of the objects for which the society is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such society :
- "3. The manner of making, altering, amending, and rescinding rules :
- "4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers :
- "5. A provision for the investment of the funds, and for an annual or periodical audit of accounts :
- "6. The manner in which disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled :

And the rules of every such society shall provide that all moneys received or paid on account of each and every particular fund or benefit assured to the members thereof, their husbands, wives, children, fathers, mothers, brothers or sisters, nephews or nieces, *for which a separate table of contributions payable shall have been adopted*, shall be entered in a separate account, distinct from the moneys received and paid on account of any other benefit or fund, and also that a CONTRIBUTION SHALL BE MADE TO DEFRAY THE NECESSARY EXPENSES OF MANAGEMENT, and a separate account shall be kept of such contributions and expenses; s. 25.

"Two printed or written copies of such rules, signed by three of the intended members and the secretary or other officer, shall be transmitted to the registrar, and the said registrar shall advise with the secretary or other officer, if required, for the purpose of ascertaining whether the said rules are calculated to carry into effect the intentions and object of the persons who desire to form such society, and if the registrar shall find that such rules are in conformity with law and with the provisions of this Act, he shall give a certificate in the form set forth in the second schedule to this Act, and shall return one of the said copies to the said society, and shall keep the other in such manner as shall from time to time be directed by one of her Majesty's Principal Secretaries of State, AND FOR WHICH CERTIFICATE NO FEE SHALL BE PAYABLE TO THE SAID REGISTRAR; and all rules, when so certified as aforesaid, shall be binding on the several members of the said society: Pro-

vided always, that it shall not be lawful for the said registrar to grant any such certificate to a society assuring to any member thereof a CERTAIN ANNUITY OR CERTAIN SUPERANNUATION, deferred, or immediate, unless the tables of contributions payable for such kind of assurance shall have been certified under the hand of the actuary to the Commissioners for reduction of the National Debt, or by an actuary of some life assurance company established in London, Edinburgh, or Dublin, who shall have exercised the profession of actuary for at least five years, and such certificate be transmitted to the registrar, together with the copies of the rules aforesaid; s. 26.

"After the rules of a friendly society shall have been so certified by the registrar, it shall be lawful for such society, BY RESOLUTION AT A MEETING SPECIALLY CALLED FOR THAT PURPOSE, to alter, amend, or rescind the same or any of them, or to make new rules; and it shall be lawful for any friendly society formed and established under any of the Acts hereby repealed to alter, amend, or rescind the rules by which their society is governed, regulated, or managed, or to make new rules: Provided always, that two copies of the proposed alterations or amendments, and of such new rules, signed by three members of such society, and the secretary or other officer, shall be transmitted to the said registrar, to one of which shall be attached a declaration by the secretary or one of the officers of such society, that in making the same the rules of such society respecting the making, altering, amending, and rescinding rules, or the directions of the Act under which such society was established, have been duly complied with; and if the said registrar shall find that such alterations, amendments, or new rules are in conformity with law, he shall give to the society a certificate in the form set forth in the schedule to this Act, and return one of the copies to the society, and shall keep the other with the rules of such society, in his custody, AND FOR WHICH CERTIFICATE NO FEE SHALL BE PAYABLE TO THE SAID REGISTRAR, and as against such member or person such certificate shall be conclusive of the validity thereof; and all rules, alterations, and amendments, when so certified as aforesaid, shall be binding on the several members of the said society, and all persons claiming on account of a member or under the said rules; but unless and until the same shall be so certified as aforesaid such rules, alterations, and amendments shall have no force or validity whatsoever; s. 27.

"Every dispute between any member or members of any society established under this Act or any of the Acts hereby repealed, or any person claiming through or under a member, or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society, and the decision so made shall be binding and conclusive on all parties, without appeal: Provided that where the rules of any SOCIETY ESTABLISHED

UNDER ANY OF THE ACTS HEREBY REPEALED SHALL HAVE DIRECTED DISPUTES TO BE REFERRED TO JUSTICES, SUCH DISPUTES SHALL, FROM AND AFTER THE FIRST DAY OF AUGUST, ONE THOUSAND EIGHT HUNDRED AND FIFTY-FIVE, BE REFERRED TO AND BE DECIDED BY THE COUNTY COURT AS HEREINAFTER-MENTIONED: s. 40.

"If any person shall give to any member of a friendly society established under this Act or under any of the said repealed Acts, or to any person intending or applying to become a member of such society, a COPY OF ANY RULES, OR OF ANY ALTERATIONS OR AMENDMENTS of the same, OTHER THAN THOSE RESPECTIVELY WHICH HAVE BEEN ENROLLED WITH ANY CLERK OF THE PEACE OR CERTIFIED BY THE REGISTRAR, WITH A COPY OF HIS CERTIFICATE APPENDED THERETO, under colour that the same are binding upon the members of such society, or shall make any alterations in or addition to any of the rules or tables of such society after they shall have been respectively enrolled or certified by the registrar, and shall circulate the same, purporting that they have been duly enrolled or certified under this or any of the said repealed Acts, when they have not been so duly enrolled or certified, EVERY PERSON SO OFFENDING SHALL BE DEEMED GUILTY OF A MISDEMEANOR; s. 29.

"It shall be lawful for the members of any society HERETOFORE FORMED AND ESTABLISHED, OR HEREAFTER TO BE FORMED AND ESTABLISHED, at some meeting thereof to be specially called in that behalf, to dissolve or determine the same by consent: Provided that no society established under this or any Act relating to friendly societies shall be dissolved or determined without obtaining the votes of consent of five-sixths in value of the then existing members thereof, *including the honorary members*, if any, to be ascertained in manner hereinafter-mentioned, nor without the consent of all persons, if any, then receiving or then entitled to receive any relief, annuity, or other benefit from the funds thereof, to be testified under their hands individually and respectively, *unless the claim of every such person be first duly satisfied, or adequate provision made for satisfying such claim*; and for the purpose of ascertaining the votes of such five-sixths in value of the numbers as aforesaid, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member, but no one member shall have more than five votes in the whole; and the intended appropriation or division of the funds or other property shall be fairly and distinctly stated in the agreement for dissolution prior to such consent being given; and the agreement for such dissolution, duly signed as aforesaid, accompanied with a statutory declaration by one of the trustees, or by three members and the secretary, taken before a justice of the peace, that the provisions of this Act have been complied with, shall be forthwith transmitted to the registrar, to be by him de-

posited with the rules of the society, and such agreement shall thereupon be an effectual discharge at law and in equity to the trustees, treasurers, and other officers of such society, and shall operate as a release from all the members of the society to such trustees, treasurers, and other officers; and IT SHALL NOT BE LAWFUL in any society to DIRECT A DIVISION OR APPROPRIATION OF ANY PART OF THE STOCK THEREOF, EXCEPT FOR THE PURPOSE OF CARRYING INTO EFFECT THE GENERAL INTERESTS AND OBJECTS DECLARED IN THE RULES AS ORIGINALLY CERTIFIED, *unless the claim of every member is first duly satisfied, or adequate provision be made for satisfying such claims*; and in case any member of such society shall be dissatisfied with such provision, it shall be lawful for him or her to apply to the Judge of the County Court of the district within which the usual place of business of the society is situated for relief or other order; and the said Judge shall have the same powers to entertain such application, and to make such order or direction in relation thereto, as he may think the justice of the case may require, as hereinafter is enacted in regard to the settlement of disputes; AND IN THE EVENT OF THE DISSOLUTION OR DETERMINATION OF ANY SOCIETY OR THE DIVISION OR APPROPRIATION OF THE FUNDS THEREOF, EXCEPT IN THE WAY HEREINBEFORE-PROVIDED, ANY TRUSTEE OR OTHER OFFICER OR PERSON AIDING OR ABETTING THEREIN, SHALL, ON CONVICTION THEREOF BY TWO JUSTICES, BE COMMITTED TO THE COMMON GAOL OR HOUSE OF CORRECTION, THERE TO BE KEPT TO HARD LABOUR FOR ANY TERM NOT EXCEEDING THREE CALENDAR MONTHS, AS TO SUCH JUSTICES SHALL SEEM MEET; s. 13.

"In the case of any friendly society established for any of THE PURPOSES MENTIONED IN SECTION IX., OR FOR ANY PURPOSE WHICH IS NOT ILLEGAL, having written or printed rules, whose rules have not been certified by the registrar, provided a copy of such rules shall have been deposited with the registrar, every dispute between any member or members of such society, and the trustees, treasurer, or other officer, or the committee of such society, shall be decided in manner hereinbefore provided with respect to disputes, and the decision thereof, in the case of societies to be established under this Act, and the sections in this Act provided for such decision, and also the section in this Act which enacts a punishment in case of fraud or imposition by an officer, member, or person, shall be applicable to such uncertified societies: Provided always, that nothing herein contained shall be construed to confer on any such society whose rules shall not have been certified by the registrar, or any of the members or officers of such society, any of the powers, exemptions, or facilities of this Act, save and except as in and by this section is expressly provided; s. 44.

"The trustees of any friendly society may,



out of the funds thereof, SUBSCRIBE TO ANY HOSPITAL, INFIRMARY, CHARITABLE, OR OTHER PROVIDENT INSTITUTION, such annual or other sum as may be agreed upon by the committee of management, or by a majority of the members at a meeting called for that purpose, in consideration of any member of such society, his wife, child, or other person nominated, being eligible to receive the benefits of such hospital or other institution, according to the rules thereof; s. 39.

“And whereas many PROVIDENT, BENEVOLENT, and CHARITABLE INSTITUTIONS AND SOCIETIES are formed and may be formed for the purpose of relieving the PHYSICAL WANTS AND NECESSITIES OF PERSONS IN POOR CIRCUMSTANCES, OR FOR IMPROVING THE DWELLINGS OF THE LABOURING CLASSES, OR FOR GRANTING PENSIONS, or for PROVIDING HABITATIONS FOR THE MEMBERS OR OTHER PERSONS ELECTED BY THEM, and it is expedient to afford protection to the funds thereof: Be it enacted, that if two copies of the rules of any such institution or society, and from time to time the like copies of any alterations or amendments made in the same, signed by three members and the secretary thereof, shall be transmitted to the registrar aforesaid, such registrar shall, if he shall find that the same are not repugnant to law, give a certificate to that effect; and thereupon the following sections of this Act, that is to say, the SEVENTEENTH, EIGHTEENTH, NINETEENTH, TWENTIETH, TWENTY-FIRST, and TWENTY-SECOND, FORTIETH, FORTY-FIRST, FORTY-SECOND, and FORTY-THIRD, shall extend and be applicable to the said institution and society, as fully as if the same were a society established under this Act; s. 11.

“The trustees of friendly societies established UNDER THIS ACT OR UNDER ANY OF THE REPEALED ACTS, or the officer thereof appointed to prepare returns, shall, once in every year, in the months of JANUARY, FEBRUARY, or MARCH, transmit to the registrar a general statement of the funds and effects of such society during the past twelve months, or a copy of the last annual report of such society, and shall also, within THREE MONTHS AFTER THE EXPIRATION OF THE MONTH OF DECEMBER, ONE THOUSAND EIGHT HUNDRED AND FIFTY-FIVE, and so again within three months after the expiration of every five years succeeding, transmit to the said Registrar a return of the rate or amount of sickness and mortality experienced by such society within the preceding FIVE years, in such form as shall be prepared by the said registrar, and an abstract of the same shall be laid before Parliament; and the registrar shall also lay before Parliament every year a report of his proceedings, in his office of registrar, and of the principal matters transacted by friendly societies which have come under his cognizance during the past year; s. 45.”

## LAW OF ATTORNEYS AND SOLICITORS.

### PRIVILEGED COMMUNICATIONS.

IN a suit to establish the validity of a will, under which the plaintiff claimed as devisee, the defendant, who was the heir-at-law, obtained the usual order for production of documents in the plaintiff's possession, who objected to the production of those comprised in the 2nd and 3rd schedules to his affidavit, on the ground they were privileged communications between him and Mr. J. R. Mullings and Messrs. Mullings, Daubeny, and Chubb, solicitors, of Cirencester, as his advisers and solicitors, and were all written and sent either in contemplation of or since the institution of the suit. At the time the letters were written by Mr. Mullings he had ceased to practise as a solicitor, but by arrangement his name still remained in the firm. The plaintiff deposed, that at the time the letters were written he was not aware Mr. Mullings had ceased to practise.

The *Master of the Rolls* said,—

“I am of opinion that these letters are privileged. It is objected in the first place that Mr. Mullings was not a solicitor at the time they were written, and that they do not come within the rule. The question is, whether these communications are privileged, or whether the plaintiff is bound to disclose them. Now, free communication between a client and his solicitor is allowed and protected, and the plaintiff in this case swears that he was not aware that Mr. Mullings was not a solicitor at the time, and though Mr. Mullings had ceased to practise, still his name remained in the firm. Is the privilege then of the plaintiff to communicate with his solicitor in the fullest manner destroyed under these circumstances? I am of opinion that the fact of Mr. Mullings not being a solicitor at the time does not destroy the privilege. If it did, the consequences would be very serious, and the privilege would in every case be liable to be destroyed, for though a solicitor at the time of his employment by a client might be duly qualified, and communications between him and his client therefore within the rule, yet if the solicitor forgot during the progress of the cause or matter to take out his certificate, the privilege would be gone, and he would have to disclose everything that took place between him and the client in the meantime, though the client knew nothing of the disqualification. In my opinion, the result would be to defeat the operation of the rule, the object of which is to allow the fullest and most unreserved communication between the client and his solicitor. If, indeed, a client knows that the person with whom he communicates is not and cannot act as a solicitor, of course the communications

do not fall within the reason of the rule, and are not privileged. The cases of *Wilson v. Rastall*, 4 T. R. 753, and *Fountain v. Young*, 1 Esp. 113; 1 Taunt. 60, at *nisi prius*, are, no doubt, at variance with this doctrine, and the latter is a very strong case; but, if the report of it be correct, the rule there laid down, that a person who is not a solicitor, but whom a party supposing him to be such makes confidential communications respecting his cause, is bound to give evidence of them if called as a witness. This is not now the rule of this Court; and by the cases referred to by Lord Lyndhurst, and by the other later decisions, the rule has been carried out to its proper limits. Thus in *Steele v. Stewart*, 1 Phill. 471, it was held that communications made through an agent are as much privileged as if made directly by the client himself to the solicitor, though the employment of an agent was not necessary. I am of opinion, therefore, that the fact of Mr. Mullings having ceased to practise as a solicitor does not take away the privilege.

"The second objection is, that these communications took place when no question had arisen between the parties, and could not, therefore, have been in contemplation of litigation; and it is contended that the Court will enforce disclosure of all matters which may have taken place *ante litem motam*. This suit has reference to the competency of a gentleman to make a will, and therefore it is said that litigation could not be in contemplation till his death, before which period and after the date of the will, the communications in question took place; but the cases of *Herring v. Cloberry*, 1 Phill. 91, and others, show that communications whether relating or not to any litigation pending or expected, are privileged; and here, though at the time no litigation could be commenced, yet there were good reasons for supposing litigation would take place after the death of the testator; and, in fact, there is an affidavit to that effect; there were, therefore, very good grounds for taking advice as to matters relating to the particular subject, in anticipation of litigation. I think, therefore, both objections fail, and the letters must be treated as privileged." *Calley v. Richards*, 19 Beav. 401.

## NOTES ON RECENT STATUTES.

### COMMON LAW PROCEDURE ACT, 1854.

#### AFFIDAVITS IN ANSWER TO NEW MATTER ON MOTIONS UNDER S. 45.

In an action on a promissory note, the jury found a verdict for the defendant. An affidavit was used, on a motion for a rule *nisi* for a new trial on the ground of misdirection, to show how the undersheriff of Middlesex, who presided at the trial, had left the case to the jury. The defendant's counsel handed to the other side an affidavit which he proposed to

read in answer, detailing the transaction out of which the action arose.

An application was then made for leave to file an affidavit in answer under the 17 & 18 Vict. c. 125, s. 45.<sup>1</sup>

*Maule, J.*, said,—“The 45th section applies only to affidavits which are *used* by the opposite party.” *Jervis, L. C. J.*, added,—“There is nothing upon which to found a substantive motion. When the rule comes on for argument, it may be that we may think it right to give you an opportunity to answer any new matter in the affidavit on which cause is shown. By showing you his affidavit, according to the ordinary courtesy of the Bar, Mr. Prentice does not bind himself to produce it. \* \* \* I cannot help thinking that the matter has not been well considered. The effect would be very much to aggravate the expense of a rule, when it might perhaps turn out to be wholly unnecessary. It must be a rule *nisi*, and affidavits must be filed; and office copies taken. \* \* \* The practice, it seems, is not yet settled in the Exchequer. The Court of Queen's Bench have decided that advantage is to be taken of the 45th section of the 17 & 18 Vict. c. 125 by a substantive motion. For the reasons already given, we are not inclined to adopt that construction of the Act. If, therefore, we decide the other way, the Court of Exchequer, when the question arises before them, may settle the practice, which it is very desirable should be done at once.” *Wood v. Cox*, 16 C. B. 494.

## EXPENSE OF ENFRANCHISEMENT OF COPYHOLDS.

In reply to the letter of R—l, in the *Legal Observer* of 6th October (page 445), I may state at present that in the case alluded to by a “Lord of a Manor,” evidence was adduced as well on behalf of the lord as of the tenant,—viz., the evidence of their respective surveyors. It was not, however, called for by the umpire, but was *voluntarily* adduced by both parties before him.

The decision was not occasioned by an appeal or other special circumstances, but on a simple reference to the umpire named by the

<sup>1</sup> Which enacts, that “upon motions founded upon affidavits, it shall be lawful for either party, with leave of the Court or a Judge, to make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as shall hereafter be made respecting such affidavits.”

Commissioners to ascertain the amount of the compensation for the enfranchisement.

The expenses were clearly "incidental to the enfranchisement;" but it would seem that the Commissioners (whether correctly or not remains to be seen on a review of the case) seem to consider that it was incumbent on the "umpire," on *his own judgment alone*, to fix the amount of the compensation, without the testimony of surveyors,—or that, at all events, if he received their evidence (*which he was unquestionably bound to do*) that the expenses attending it should be borne by the parties producing it.

It is impossible that the Legislature ever intended to inflict such expenses on the lord of a manor, looking at the expense of an actual survey by competent land surveyors and their usual charges for attending to give evidence, which in many cases would almost absorb the entire compensation.

The Commissioners, it is presumed, acted in the exercise of the power purporting to be vested in them, to determine what expenses were incidental to the enfranchisement, for they ordered the umpire's charges to be borne by the tenant, leaving the lord of the manor to pay all his own surveyor's heavy charges, besides, if I am not misinformed, the bulk of the law expenses.

Oct. 9, 1855.

DOM. MAN.

*Erratum.*—Page 445, for "harriers" read "barriers."

## SELECTIONS FROM CORRESPONDENCE.

### CHANCERY REFORM.

SIR,—At the commencement of the Chancery Commissioners Report (1852), it is stated that very weighty "matters of the Law," involving the anomalous distinction of "Law" into "Law and Equity!" would form the subject of discussion in a *second* report. Let us hope that the promised essay will be something less derogatory to the character of our English Jurisprudence than the bald inconclusive essay which was made the foundation of the (so called) "Chancery Reform" Bill.

The Lord Chancellor, at the end of the Session of 1854, promised that his "commissioned" sages of the Law would give their sedulous attention to the subject of *Evidence* in Chancery, during the then ensuing Vacation; but they have as yet indicated no *results* of deliberation.

There can be only one *best* mode of elucidating matters of fact; and, as *every Court* ought to have the best mode, it follows that all Courts should have the *same* mode. The self-same facts are now proved in the *best* mode and the *worst*, merely with regard to the relation between the parties to the suit, and the "Common Law" or "Equity" designation of it!

ULPIANUS.

### LOSS OF CHATTEL.—SALE.

A. lent B. a new pianoforte, of the value of nearly 40*l.* B., in 1853, sold it to C., a pawnbroker, for 10*l.*, on a verbal promise that he should have it again on that sum being repaid; but C. now refuses to part with it, although the money has been offered to be repaid to him. Can A., under these circumstances, maintain an action against the pawnbroker for it, or is he precluded by the sale?

A.

### ASSAULTS ON WIVES.

CONSIDERING from the numerous brutal cases of murder and assaults occurring at the different police courts, I fear it must be admitted that a more stringent law is called for to repress the growing evil. Various plans have been suggested,—some considering solitary confinement, others a sound flogging, might be efficacious, while others advocate greater facility of divorce.

AMICUS.

## INNS OF COURT.

*Lectures to be delivered during the ensuing Educational Term.*

### CONSTITUTIONAL LAW AND LEGAL HISTORY.

THESE Lectures will comprise the following subjects:—

Rules for the interpretation of Law—Progress of the Constitution during the reign of Elizabeth—Acts of Supremacy and Uniformity—Influence of the Puritan party at the Accession of James the First—Privileges of the House of Commons at the close of his reign—Conduct of the Judges during the reigns of the Stuarts—Influence of the Church of England during that time—Courts of Star Chamber and High Commission—Attempts to make the Church independent of State control—Conduct of the House of Commons from the accession of James the First to the Civil War—Changes in the tenure of Property—Changes in the Value of Property, as indicated by the Laws against Fraud and the Bankrupt Laws—Changes in the Condition of the Labouring Class—Impeachments of Bacon, Middlesex, and Danby—Character and Progress of English Jurisprudence.

In his *Private Lectures* the Reader will pursue the History of England from the Death of Anne to the Accession of George the Third. He will then return to the reign of Henry the Seventh. He will endeavour to illustrate the progress of our Municipal and Constitutional Law, by referring to the Law and History of Rome and France.

Books:—*D'Aguessseau Etudes sur les Fonctions De l'Avocat du Roi*, vol. 15, p. 104.

8th edition. By Pardessus.

*Pothier's Pandects, Chapter de Regulis Juris.*

*Millar's View of the English Constitution.*

*Hallam's Chapters on the Reign of Henry the Eighth, Elizabeth, James the First, Charles the First, and Charles the Second;*

*Parliamentary History during those Reigns ;  
Rapin's History of those Reigns.*

*Blackstone, vol. 4.*

*Clarendon's History and May's History.*

*The State Trials of the Period.*

The Reader on Constitutional Law and Legal History will deliver his Public Lectures at Lincoln's Inn Hall, on Wednesday in each week (the first Lecture will be delivered on the 7th November), commencing at 2 P. M. The Reader will receive his Private Classes on Tuesday, Thursday, and Saturday mornings in each week, at half-past 9 o'clock, in the Benchers' Reading Room, Lincoln's Inn Hall. (The first Private Class to be held on Thursday, the 8th November.)

#### EQUITY.

The Reader proposes to give, during the ensuing Educational Term, a Course of Six Lectures on the Origin of the Laws of England—The System of Writs, and the relation of the Superior Courts of Common Law to the Chancery, during the first three Centuries after the Norman Conquest—On the Equitable Jurisdiction of the Council, and its Transference to the Chancellor—On the Authority conferred by the Custody of the Great Seal—The History of the Court of Chancery and the principal differences between the mode of procedure which it has adopted, and that followed in the Courts of Common Law—On the Amalgamation of the Two Jurisdictions—On Rehearing, Review, and Appeals in and from the Court of Chancery.

The Reader on Equity proposes to form two Private Classes—a Senior and Junior—according to the amount of preliminary knowledge possessed by the Students; using, in the Junior, "Smith's Manual of Equity Jurisprudence" as a text-book; and in the Senior, whilst following the division adopted in the Manual, illustrating the subject by a more frequent reference to cases.

The Reader on Equity will deliver his Public Lectures at Lincoln's Inn Hall, on Thursday in each week during the Educational Term, commencing at 2 o'clock P. M. (The first Lecture to be delivered on the 8th November.) The Reader will receive his Private Class on Monday, Wednesday, and Friday evenings, from 7 to 9 o'clock, in the Benchers' Reading Room. (The first Private Class to be held on Friday, the 9th November.)

#### LAW OF REAL PROPERTY, &c.

The Reader proposes to deliver, in the ensuing Educational Term, a course of Six Public Lectures on the following subject:—

*The Nature, Construction, and Operation of Covenants, with Reference to the Transfer of Real Property.*

The Lectures to be delivered to the Private Classes will comprise the following subjects:—With the Senior Class, the Reader proposes to discuss the Law of Covenants; and with the Junior Class, the Learning of Remainders,

Springing and Shifting Uses, and Executory Devises.

The Public Lectures will be delivered at Gray's Inn Hall, on Friday in each week, at 2 P. M. (The first Lecture to be delivered on the 9th of November.) The Private Classes will be held in the North Library of Gray's Inn, on Monday, Wednesday, and Friday mornings, from a quarter to 12 to a quarter to 2 o'clock. (The first Private Class to be held on Monday, the 12th November.)

#### JURISPRUDENCE AND THE CIVIL LAW.

The Reader proposes to deliver, in the course of the ensuing Educational Term, Six public Lectures on the following subjects:—

I.—*The Roman Civil Law*, its Original Character, the Agencies by which it was Progressively Modified, and the Form which it ultimately assumed.

II.—*The Philosophical Theories of the Roman Jurisconsults*, their effects on Modern Jurisprudence, and, in particular, on International Law.

III.—*Juristical Conceptions Peculiar to Primitive Societies*, their Importance, and the Mistakes which have arisen from neglecting them, more particularly with reference to the Feudal System.

With his Private Class, the Reader will commence an Elementary Course of Roman Law, employing as his Text-book the Commentaries of Gaius, the Institutes of Justinian (Sandars's or Ortolan's Edition), and the *Institutiones Juris Romani Privati* of Warnkönig. On certain days, the Last Two Titles of the Digest "*De Verborum Significatione*" and "*De Regulis Juris*" will be discussed and illustrated. Copies of the entire *Corpus Juris* will be provided in the Lecture Room.

The Public Lectures will be delivered in the Hall of the Middle Temple on Tuesday in each week, at 2 P. M. (The first Lecture of the Course on Tuesday, November 13.) The Private Classes will assemble at the Class-room in Garden Court, on Tuesday, Thursday, and Saturday evenings, from 7 to 9 o'clock. (The first Private Class to be held on Thursday, the 15th November.)

#### COMMON LAW.

The Reader proposes to deliver, during the Educational Term commencing November 1, 1855, Six Public Lectures designed to indicate the main subdivisions of our Common Law, and the leading principles applicable in each of them respectively.

The Lectures will treat of:—

I.—Civil Proceedings in Contract or in Tort; the remedy being ordinary or extraordinary.

II.—Quasi-Criminal Proceedings—their Nature and the objects to be attained thereby.

III.—Criminal Proceedings—with a view to Summary Conviction, by Indictment or otherwise.

With his Private Class, the Reader on Common Law will pursue the line of inquiry above marked out, his aim being to lay down the fundamental rules applicable in each depart-

ment of the Law, and to illustrate them by reference to decided cases. In carrying out this plan he will principally make use of the following books:—*Blackstone's* (or *Stephen's*) *Commentaries*; *Smith's Leading Cases*; and *Archbold's Criminal Pleading* (by *Welsby*).

The Public Lectures will be delivered in the Hall of the Inner Temple, on Monday in each week, at 2 P.M. (The first Lecture on Monday, November 12.) The Private Class will be held in the Hall on Tuesday, Thursday, and Saturday mornings, from a quarter to 12 to a quarter to 2. (The first Class to be held on Tuesday, the 13th November.)

By Order of the Council,  
(Signed) RICHARD BETHELL,  
Chairman.

Council Chamber Lincoln's Inn,  
August 3, 1855.

*Note.*—The Educational Term commences on the 1st November, and ends on the 22nd December, 1855.

The first meeting of each Private Class will take place on the usual morning, or evening, of meeting next after the first Public Lecture on the same subject.

## LOCAL AND PERSONAL ACTS.

*Declared Public, and to be Judicially Noticed.*  
18 & 19 VICT.

[Concluded from page 451.]

126. An act for the Improvement, Maintenance, and Regulation of the Port of Hartlepool, for the Construction of a Harbour of Refuge there, and for other purposes.

127. An act for making a Railway from Ladybank on the Line of the Edinburgh, Perth, and Dundee Railway, by Auchtermuchty and Strathmiglo, to Milnathort and Kinloss.

128. An act to authorise the Sunderland Dock Company to make further Works; and to amend and consolidate the Acts relating to the said Company; and for other purposes.

129. An act for regulating the Share Capital of the Manchester, Sheffield, and Lincolnshire Railway Company; and for other purposes.

130. An act to enable the Stockport, Disley, and Whaley Bridge Railway Company to construct a Junction Line to the Cromford and High Peak Railway, and for other purposes.

131. An act to enable the Carmarthen and Cardigan Railway Company to make a Deviation in their Line of Railway; and for other purposes.

132. An act for the improvement of the Town of Leek in the County of Stafford, for purchasing the Market Tolls, and for providing more commodious Markets and Cemeteries, and for better supplying the Inhabitants with Water; and for other purposes.

133. An act to enable the Weymouth Waterworks Company to increase and extend their Supply of Water, and to construct new Works, and for other purposes.

134. An act for changing the Corporate

Name of the Company of Proprietors of the Grand Surrey Canal; for consolidating their Acts; for authorising them to make a new Entrance from the Thames, additional Docks and other Works, and to raise further Moneys; and for other purposes.

135. An act for granting further Powers to the Torquay, Tor, and Saint Mary Church Gas Company.

136. An act to repeal the Acts passed for repairing the Road from Hedon through Preston and Bilton to Hull, and other Roads in the County of York, and to make other Provisions in lieu thereof.

137. An Act for incorporating the "Gaslight Company of Sligo," and for other purposes.

138. An act to amend the Provisions of "The West Bromwich Improvement Act, 1854," with the relation to the Prevention of Smoke.

139. An act to vary the Mode of carrying the Staines, Wokingham, and Woking Railway across certain Roads, and for other purposes.

140. An act for incorporating "The Cape Town Railway and Dock Company," and for other purposes connected therewith.

141. An act to amalgamate the Glasgow and Inchbely Bridge and Fossil and Balmore Turnpike Road Trusts, and to make Branch Roads; and for other purposes.

142. An act for making and maintaining a Turnpike Road from Charlestown of Aboyne, by Ballater, Crathie, and Castletown of Braemar, to Cairnwell Hill, with a Branch to Crathie, in the County of Aberdeen; and for other purposes.

143. An act for constructing and maintaining a Quay and other Works in the Borough of Gateshead in the County of Durham, and for other purposes.

144. An act to enable the Halifax Gaslight and Coke Company to transfer their Undertaking and Powers to the Halifax Local Board of Health; and for other purposes.

145. An act to amend an Act of the 1st Year of the Reign of King George the Fourth, Chap. 100, to enable her Majesty's Commissioners of Lieutenancy for the City of London to purchase certain Lands and Houses for building more convenient and requisite Head Quarters, Storehouses, and other proper Accommodation for Royal London Militia, and to confer certain other Powers.

146. An act for making a Railway from the London and North Western Railway at Dunstable in the County of Bedford to the Great Northern Railway at or near Welwyn in the County of Hertford, to be called the "Luton, Dunstable, and Welwyn Junction Railway;" and for other purposes.

147. An act to extend the Limits of the Borough of Folkestone; to enable the Corporation of the said Borough to construct a Market House; to make certain new Streets and other Improvements; and to pave, light, drain, and otherwise improve the said Borough; and for other purposes.

148. An act for insuring the due Proof of Gun Barrels in England; and for other purposes.
149. An act for enabling the Stockton and Darlington Railway Company to make new Branches and other Works; to acquire additional Lands; and for other purposes.
150. An act for authorising the making and maintaining of the West Somerset Mineral Railway, and for improving and regulating of the Harbour of Watchet in the County of Somerset; and for other purposes.
151. An act for better supplying with Water the Town and Parishes of Wolverhampton, the Suburbs thereof, and the Parishes and Places adjacent thereto.
152. An act to amend "The Bradford Corporation Waterworks Act, 1854."
153. An act for making a Railway from the Port Carlisle Railway in the Township of Drumburgh to or near to the Coat Lighthouse in Silloth Bay in the Parish of Holme Cultram in the County of Cumberland, and also a Dock and Jetty at Silloth Bay; and for making Arrangements with the Port Carlisle Dock and Railway Company; and for other purposes.
154. An act for maintaining the Yorkshire District of the Road from Keighley in the West Riding of the County of York to Kirkby-in-Kendal in the County of Westmoreland.
155. An act for enabling the Mayor, Aldermen, and Burgesses of the Borough of Liverpool to acquire lands; and for other purposes.
156. An act to renew the Term and continue the Powers of an Act passed in the 9th Year of the Reign of his Majesty King George the Fourth, intituled "An Act for more effectually repairing and improving the Road from Wadhurst to the Turnpike Road on Lamberhurst Down, both in the County of Sussex, and from the Turnpike Road on Pullen's Hill to West Farleigh Street, both in the County of Kent.
157. An act for extending the Times granted to purchase Lands for the Part of the Waveney Valley Railway between Bungay and Beccles.
158. An act to enable the Edinburgh and Glasgow Railway Company to enlarge their Station in Queen Street, Glasgow; to raise additional Capital; and for other purposes.
159. An act for making and maintaining the Great Northern London Cemetery, and for other purposes.
160. An act for better enabling the Mayor, Aldermen and Burgesses of the Borough of Wisbech to raise and secure Moneys payable by them to the Nene Valley Drainage and Navigation Improvement Commissioners; and for other purposes.
161. An act to repeal the Act relating to the Boston and Nightingale's Turnpike Road and to make other Provisions in lieu thereof.
162. An act to authorise the Construction of a Dock on the North Side of the River Thames, to be called "The Dagenham (Thames) Dock."
163. An act to amend "The London Necropolis and National Mausoleum Act, 1852," and for other purposes.
164. An act to repeal an Act for making, widening, repairing, and maintaining certain Roads leading to and from the Town of Honiton in the County of Devon; and to make other Provisions in lieu thereof.
165. An act for making a Railway from the Leven Railway at the Town of Leven to the Town of Kilconquhar in the County of Fife, to be called "The East of Fife Railway."
166. An act to incorporate the Royal Medical Benevolent College, and for other purposes.
167. An act to enable the Londonderry and Coleraine Railway Company to lease a portion of their Undertaking; and for other purposes.
168. An act for more effectually repairing the Cavendish Bridge and Brassington Road, and for making a Branch Line of Road in connexion with the same, all in the County of Derby.
169. An act for making Railways from the Farnborough Extension of the West London and Crystal Palace Railway to the North Kent Line of the South-Eastern Railway, and to the London, Brighton, and South Coast Railway, with Branches therefrom; and for other purposes.
170. An act for extending the Limits of the Harbour of Barrow in the County Palatine of Lancaster; and to enable the Commissioners of the said Harbour to raise a further Sum of Money; and for other purposes.
171. An act for vesting the Undertakings of the Birkenhead Dock Company, and of the Trustees of the Birkenhead Docks in the Mayor, Aldermen, and Burgesses of the Borough of Liverpool, and for other purposes.
172. An act for improving the Postal and Passenger Communication between England and Ireland, and for authorising arrangements between certain Companies in England and Ireland in relation thereto; and for other purposes.
173. An act to repeal and consolidate the several Acts relating to the Furness Railway Company; to enable the said Company to raise a further Sum of Money; to give further Powers to the said Company; and for other purposes.
174. An act to authorise the Trustees of the Liverpool Docks to construct new works, and to raise a further Sum of Money; and for other purposes.
175. An act for enabling the South Staffordshire Railway Company to make certain Branch Railways; for the Purchase of additional Lands at Wichnor and Dudley; and for other purposes.
176. An act for maintaining and improving the Road from Gateshead in the County of Durham to the Hexham Turnpike Road near Dilston Bar in the County of Northumberland, and other Roads connected therewith.
177. An act to enable the Portsmouth Railway Company to make an Alteration in the Line of their Railway; and for other purposes.
178. An act for the Improvement of the Borough of Shrewsbury in the County of Salop.
179. An act to correct an Oversight in "The Hereford Improvement Act, 1854."

180. An act to incorporate a Company for making a Railway from the Bishop Auckland Branch of the North Eastern Railway in the Township of Elvet to the Township of Brandon and Byshottles, all in the County of Durham, to be called "The Dearness Valley Railway;" and for other purposes.

181. An act to enable the Oxford, Worcester, and Wolverhampton Railway Company to alter and improve certain of their works, and to construct additional Works; and to authorise Arrangements with respect to the Stratford-upon-Avon Canal; and for other purposes.

182. An act for enabling the Somerset Central Railway Company to construct Railways to Wells and to Burnham, and a Pier at Burnham, and to raise additional Capital; and for other purposes.

183. An act for the making and maintaining of the Severn Valley Railway; and for other purposes.

184. An act to facilitate the Erection of One or more Churches in the Parishes of Tormoham and Saint Mary Church, at or near the Town of Torquay, in the County of Devon; and for other purposes.

185. An act to repeal the Act of the 9th Victoria, Chapter 32, to reconstitute and extend the Police District therein mentioned under the Name of the Airdrie Rural Police District, and to erect and maintain a Hall, Court House, and Public Offices for the Airdrie District of Lanarkshire.

186. An act to authorise the Transfer of the Undertaking of the Deptford Gaslight and Coke Company to the Surrey Consumers' Gas Company, and to wind up the Affairs of the first-named Company; and for other purposes.

187. An act for enabling the East Kent Railway Company to extend their authorised Line of Railway by the Construction of a Railway from Canterbury to Dover, with Two Branches at Dover; to increase their Capital; and for other purposes.

188. An act for amending the Acts relating to the London and South Western Railway Company; for regulating their Capital; and for other purposes.

189. An act for the Conservancy and Improvement of Dundalk Harbour and Port, and for other purposes.

190. An act for making certain Railways to connect Glasgow, Dumbarton, and Helensburgh, in the Counties of Lanark and Dumbarton; and for making Provision for the Use and working of the said Railways.

191. An act for making a Railway from the Great Western Railway at Southall in the County of Middlesex to Brentford in the same County, with Docks at the last-mentioned Place; and for other purposes.

192. An act for making a Railway and Pier to and at Stokes Bay in the County of Hants.

193. An act for extending the Times granted to the Westminster Improvement Commissioners by "The Westminster Improvement Act, 1845," "The Westminster Improvement Act, 1847," "The Westminster Improvement

Act, 1850," and "The Westminster Improvement Act, 1853," for the compulsory Purchase of Lands and the Completion of Works; and for altering the Corporate Name of "The Westminster Association for improving the Dwellings of the Working Classes" to "The London and Westminster Association for improving the Dwellings of the Working Classes;" and for other purposes.

194. An act to change the corporate Name of the Derbyshire, Staffordshire, and Worcestershire Junction Railway Company, to repeal their Act and consolidate their Powers, to alter and define their Undertaking, to reduce their Capital; and for other purposes.

195. An act for facilitating the Completion of the Westminster Improvements, and for the Incorporation of the Westminster Land Company for a limited Period for that purpose.

196. An act for transferring Part of the Property and Powers of the Trustees of the River Lee; and for the Amendment of the Acts of the New River Company, the East London Waterworks Company, and the said Trustees; and for other purposes.

197. An act to repeal, alter, and amend some of the Provisions of "The Royal Conical Flour Mill Company's Act, 1854;" to enable the Company to raise a further Sum of Money; and for other purposes.

198. An act for making a Railway from the Manor Street Terminus of the authorised Westminster Terminus Railway in the Parish of Clapham in the County of Surrey to Norwood in the Parish of St. Mary Lambeth in the same County, connecting the Westminster Terminus Railway with the West End of London and Crystal Palace Railway.

## REGULATIONS AS TO POSTAGE STAMPS.

[From the *London Gazette* of 9th October.]

THE Board of Inland Revenue have, in conformity with the provisions of the 4th section of the 18 & 19 Vict. c. 78, provided the necessary apparatus for impressing with postage stamps paper sent in by the public for the covers or envelopes of letters.

Notice is therefore given, that the Board are now prepared to receive paper, to be delivered at the Head Office, Somerset House, London, for the purpose of being impressed with stamps for denoting the several rates of postage, subject to the following regulations, namely:—

When the amount of the stamps required by any person shall not exceed 10*l.*, a fee of 1*s.* will be charged in addition to the duty, if paper of one size only be sent in, and if more than one size be sent in, then a fee of 1*s.* for each size.

On the warrants hereafter-mentioned, no fee will be payable, but the sizes of paper will be restricted as follows;

When the amount exceeds 10*l.* and is under 20*l.*, paper of one size only will be received.

If the amount exceeds 20*l.* and is under 30*l.*,

two sizes of paper only will be received; 30*l.* and under 40*l.*, three sizes of paper; 40*l.* and under 50*l.*, four sizes of paper; and not more than four sizes of paper will be allowed to be included in any one warrant of however high an amount.

No folded envelopes can be stamped, and therefore paper whether intended for envelopes or letters, must be sent in unfolded, and every distinct size and form of envelopes or paper must be marked so as to indicate the place on which the stamp is to be impressed, in order that it may appear in the proper position according to the rules of the Post Office, when the envelope or letter is folded and made up.

No coloured paper can be received for stamping, nor any paper of such thinness as not to bear the impression of the dies.

Envelopes provided by this office, with the proper stamps thereon, will be substituted for any of those sent in which may be spoiled in the operation of stamping.

It should be borne in mind that licensed vendors only are authorised to sell postage stamps impressed as above-mentioned, or any other.

By order of the Board,

(Signed) THOMAS KEOGH, *Secretary.*

## LEGAL ANTIQUITIES.

### ANCIENT WILLS.

*Excerptus e testamento Domini Egidii Dawbeny militis.—Prob. Ebor., 4th March, 1445-6.*

Al be it so that the said Sir Giles Daubeney, Knight, maad this said testament, wrote it w<sup>t</sup> his owen hands, and selid it w<sup>t</sup> his seal of armis, the *iiij<sup>th</sup>* day of Marche, the yer of our Lord *mccccxliiiij.* as it is above-written, in the which testament the residue of his goodis noght bequethid is not disposid, wherefor afterward, y<sup>e</sup> is to say y<sup>e</sup> *xj* day of Januar<sup>r</sup>, the yer of our Lord *mccccxlv.*, at Barington, to y<sup>e</sup> said Sir Giles liggig in his sekenesse, whereof he died sone after the same day, Sir Robert Wilby prest, his goostly fadir, saide,—“Sir, ye have maade a testament and bequethid many things to diverse personis, making no mencion whoo sholde have y<sup>e</sup> residue of your goods y<sup>e</sup> be noght bequetid; wol ye vouche saaf to say who shal have it.” Forthw<sup>t</sup> the said Knight, w<sup>t</sup>out any tarrying, said,—“My

wif shal have it.” This was his last wille.—*Testamenta Eboracensia*, vol. 2, pp. 113, 114 (published by the Surtees Society, Durham).

[From the Reports of Sir Henry Hobart.]

*Marshall versus Steward.*

Mich. 13 Jac. Rot. 1134.

### SLANDER.

“Marshall brought an action of the case against Steward, reciting the Stat. of 1 Jac. of Invocation of Foul Spirits (which was needless), for speaking these words unto him,—‘The devil appears unto thee every night in the likeness of a black man, riding upon a black horse, and thou conferrest with him, and whatsoever thou dost ask him he doth give it thee, and that is the reason thou hast so much money.’ And after a verdict finding the words, the Court gave judgment for the plaintiff.”

*Harris against Cotton.*

Tr. 15 Jac. Rot. 924.

### PLEADINGS.

“In an action of debt upon the Statute of 2 Ed. 6, for not setting out of tithes, *Towse* moved the Court that the case was thus,—‘That the corn was growing upon the glebe-land of the vicars, which was discharged of tithes, being in his own use; but if it were lett out, did pay tithes. Now, the vicar here did sow the land himself being in his own hands, and died before it was severed, and his executors did cut and carry the corn away, and he that had the parsonage appropriate, brought his action, whereupon he prayed the opinion of the Court, whether he may plead *nihil debet*.’ But the Court would give no opinion, ‘because it hanged before them in suit.’”

## NOTES OF THE WEEK.

### LAW APPOINTMENTS.

The Right Hon. *Edward Horsman* was sworn in a Member of the Privy Council, on Monday, at Dublin Castle.—From the *Daily News*.

The Queen has been pleased to appoint *William Johnstone Ritchie*, Esq., to be one of the Puisne Judges of the Supreme Court of New Brunswick.—From the *London Gazette* of 9th October.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Lords Justices.

*Sneasby v. Thorne and another.* July 13, 1855.

SPECIFIC PERFORMANCE OF CONTRACT BY ONE EXECUTOR AGAINST BOTH, WHERE CO-EXECUTOR REPUDIATES.

An executor signed a contract for the sale of certain property in the name of himself and his co-executor, but without such co-executor's concurrence. It appeared that it was

the intention of the executor only to contract as would be sanctioned by his co-executor: Held, affirming the decision of Vice-Chancellor Wood, that a specific performance could not be decreed against both executors on the co-executor refusing to ratify the contract.

In this suit for the specific performance of an agreement, it appeared that the property in



question was devised by the testator to the defendants (who were also appointed executors) on trust for sale, and that one of them had signed a contract for the sale to the plaintiff in the name of himself and his co-executor, but without authority. The co-executor afterwards refused to ratify the contract, whereupon the plaintiff filed this bill. The Vice-Chancellor Wood dismissed the bill, and this appeal was now presented.

*Rolt and J. T. Humphry* in support.

*Daniel, Chandless, C. Chapman Barber, and Bagshawe, jun.*, for the executors.

The Lords Justices said, that the co-executor had anticipated he was doing an act which would be sanctioned by his co-executor, and that he did not intend to contract without such sanction. Without deciding the question whether a contract entered into by one executor could be enforced against both, the appeal would be dismissed, leaving the parties to their remedy at law.

#### Master of the Rolls.

*In re London Dock Company, ex parte Tavernor.*  
June 21, 1855.

**FINES' AND RECOVERIES' ACT.—ACKNOWLEDGMENT OF DEED BY MARRIED WOMAN AFTER ENROLMENT.—VALIDITY OF.**

*A married woman acknowledged a disentailing deed before Commissioners in Australia, under the 3 & 4 Wm. 4, c. 74, s. 79, but it appeared that such acknowledgment took place after the enrolment of the deed under sect. 41: Held, that it was, notwithstanding, effectual.*

A QUESTION arose on this petition for the payment out of Court of the purchase-money of certain premises taken by the above company, as to the validity of the acknowledgment by a Mrs. Moore, of a disentailing deed, before Commissioners in Australia, under the 3 & 4 Wm. 4, c. 74, s. 79,<sup>1</sup> where such acknowledgment had taken place after the deed had been enrolled under sect. 41.<sup>2</sup>

<sup>1</sup> Which enacts, that "every deed to be executed by a married woman for any of the purposes of this Act, except such as may be executed by her in the character of protector, for the sole purpose of giving her consent to the disposition of a tenant in tail, shall, upon her executing the same or afterwards, be produced or acknowledged by her as her act and deed before a Judge of one of the Superior Courts at Westminster, or a Master in Chancery, or before two of the Perpetual Commissioners or two special Commissioners to be respectively appointed, as hereinafter provided."

<sup>2</sup> Which provides, that "no assurance by which any disposition of lands shall be effected under this Act by a tenant in tail thereof," "shall have any operation under this Act, unless it be inrolled in her Majesty's High Court of Chancery within six calendar months after the execution thereof."

*Palmer and W. Hislop Clarke* in support; *Lloyd and Goldsmid* for the company.

The Master of the Rolls, after referring to the various sections of the Act, said, that it was absolutely necessary to enrol the deed within six months, but that under sect. 83, it was provided that where a married woman should be prevented by being beyond the seas or any other sufficient cause, from making the acknowledgment before a Judge, or Master in Chancery or two Perpetual Commissioners, a special commission should issue, which should be returnable within such time as the Court or Judge should think fit. It was, therefore, clearly intended that it should not be necessary to have the acknowledgment taken before enrolment, although, of course, the deed only affected the married woman from the time of the acknowledgment, and the certificate thereof inrolled.

#### Vice-Chancellor Kindersley.

*Pearse v. Harrison.* July 20, 1855.

**WILL.—CONSTRUCTION.—REAL ESTATE—TRUST FOR SALE.—CROWN.**

*A testator, by will (dated after the passing of the Wills' Act), "gave and bequeathed" all his "leasehold and other estate whatsoever" to trustees for sale and distribution (their executors, administrators, and assigns). It appeared that he afterwards acquired a freehold house, and made a codicil which merely revoked the appointment of a trustee, but otherwise confirmed the will. On his death there was no heir-at-law: Held, that the freehold house was not included in the gift to the trustees, but went to the Crown.*

THE testator, by his will (dated after the passing of the Wills' Act), gave and bequeathed all his leasehold and other estate and effects whatsoever to trustees, their executors, administrators, and assigns, for sale and investment and distribution of the proceeds as therein directed, and he also empowered them to grant leases and receive the rents of the leasehold property. It appeared that after the date of the will he purchased a freehold house, and had subsequently added a codicil to his will revoking the appointment of one of the trustees, but otherwise confirming his will. The question now arose in this administration suit whether the real estate passed and was included in the trust for sale, or whether there being no heir-at-law the Crown was not entitled?

*Elderton* for the trustees; *Wickens* for the Attorney-General; *Rudall* for other parties.

The Vice-Chancellor said, that although the words used were sufficient in themselves to include real estate, yet there was no direction for the sale of freehold property, nor was there any beneficial interest therein conferred on any one. It was therefore undisposed of, and as there was no heir-at-law it went to the Crown.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“Still attended at your service.”—*Shakespeare.*

SATURDAY, OCTOBER 20, 1855.

### THE ATTORNEYS' BENEVOLENT INSTITUTION.

#### OUTLINE OF PLAN AND CONSIDERATION OF SUGGESTIONS.

We last year gladly submitted to our readers the general plan of *The Attorneys' Benevolent Institution*, accompanied by some statements and reasons in its support. This excellent and necessary design has long been contemplated by many benevolent and wealthy members of the Profession, but various circumstances have hitherto prevented its commencement. In the latter part of last year a prospectus was generally circulated amongst the practitioners of the metropolis, setting forth the grounds on which their patronage was sought, with suggestions on the mode of proceeding to establish and conduct the proposed Institution.

The great utility, if not the absolute necessity of the establishment, may be thus briefly stated:—

“There are numerous cases of unfortunate members of the Profession who are struggling with old age, infirmity, disease and poverty, and lingering out a miserable existence dependent upon casual charity for support.

It may be said, by some of the more fortunate and wealthy members of the Profession, that it is sufficiently lucrative to enable a man with industry and

prudence, not only to support himself and family, but also to provide for the accidents and contingencies of life. However this may have been the case formerly, it is certainly not so at present, for from various causes the profits of an Attorney are very much reduced, while their number has been only in a small degree diminished; and the indigent members of the Profession have for a long time past been increasing, and must continue to do so.

It is true that some men are enabled, with the assistance of family connections or powerful friends, to form a business of their own, and others are rich enough to buy a practice or a share of one; but these are few indeed, and the majority have nothing but their own unaided exertions to rely upon. If, notwithstanding all the difficulties a young Attorney has to contend with, he is able to establish a business, yet his life is subject to various vicissitudes, casualties, and misfortunes, against which with the utmost prudence it is impossible invariably to guard. He may provide for death by insurance, but not against bodily infirmity or mental incapacity, either of which may, and one or other often does partially, if not totally, incapacitate him from attending to business; and in this respect the profession of an Attorney entirely

depends upon the personal confidence which clients repose in his ability and integrity. When that feeling is once destroyed or suspended, even for a short time, his business is almost always totally lost, for it cannot be carried on by clerks, or transferred to successors like a trade. He may also be ruined at one blow by accident or misplaced confidence; and if once cast down, his credit is destroyed, and it is but very rarely indeed that he can have the opportunity of re-establishing himself."

In these circumstances, it has been proposed to found an Institution "for the relief and support of old, infirm, and indigent London Attorneys," to be divided into two classes—

"The 1st class, having *wives* or *children* living with or dependent upon them, shall be denominated *Out-Pensioners*, and be permitted to reside in any part of the United Kingdom that they may select, and be allowed such pensions as may be necessary, and the state of the fund will allow.

The 2nd, composed of *widowers*, *without* families living with and dependent upon them, and of *bachelors*, who may reside together in a building to be purchased, erected, or rented for the purpose, shall be denominated *In-Pensioners*, and be maintained and supported out of the funds of the Institution, in like manner as the inmates of Morden College and other similar establishments."

Until the building shall be ready for the reception of the *In-Pensioners*, all the *Pensioners* must necessarily be considered as *Out-Pensioners*.

The *Funds* for the support of the Institution will be raised by the contribution of not less than 1*l.* a year by Attorneys taking out London certificates. It may also be reasonably expected that the more wealthy members of the Profession will be induced to subscribe towards a fund for the Building, and likewise annual subscriptions for

the support of the Institution, and may remember it in their wills.

The Institution will be under the management of a Council consisting of 40 members, having 10 votes each as a qualification, and an executive Committee of 12 members; such Council and Committee to be chosen by the subscribers out of the body at large; each of whom shall have one vote in respect of his annual subscription of 1*l.*, and one vote for every additional subscription of 1*l.* and for every donation of 10*l.*

A certain proportion of the Council and Committee will go out of office annually. The rules and regulations for the government and management of the Institution will be submitted to a General Meeting of the subscribers and donors.

The Pensioners will be elected by the members at large, each member having the same number of votes as he is entitled to on the election of members of the Council and Committee.

Nearly 200 Solicitors took the trouble to write to the promoters of the plan, warmly expressing their general approval, and some of them suggesting improvements or alterations in certain parts of the design. There is the strongest reason to believe that so soon as the Institution shall be organized by the settlement of the Rules and the election of the Directors or Committee, the members of the Profession will generally, if not universally, send in their adhesion.

It is somewhat remarkable that the learned Professions have been considerably distanced in the race of benevolence towards their own brethren by the Commercial and Trading Classes. Besides the ancient and munificent endowments under the Trusteeship of the Great City Companies, almost every Trade has established Schools for the Young, and Almshouses for the Aged and Indigent. Yet the Lawyer is more than any other liable to sudden vicissitudes in his affairs, and his success, like that of other professional men, depends on his personal exertions and continued devotion to his business.

It is matter of congratulation and encouragement that the *Medical Profession* has succeeded in establishing a noble Institution at Epsom, which was commenced in 1851, and the building being recently completed, is now open for carrying into effect the several objects of the "*Medical Benevolent College*," which are thus described :—

1. "An *Asylum*, in which 100 pensioners, who must be duly qualified medical men, or their widows (possessing incomes of at least 15*l.* a year), shall be provided with three furnished rooms each, and with such additional assistance and accommodation as the funds may permit. The Council, however, confidently hope, that the society will be enabled wholly to support some few deserving persons not possessed of the required income.

2. "A *School*, in which a liberal education will be given to 100 boys, the sons of duly qualified medical men; three-fourths of whom will pay 30*l.* a year each for education, board, lodging, and washing: while the rest will be orphans educated and maintained entirely at the expense of the society.

3. "To grant *Annuities*, and occasional pecuniary assistance to distressed members of the medical Profession or their families, as the funds of the College may from time to time permit."

The *Clergy* also, besides the old Society for "the Sons of the Clergy," have of late projected a benevolent Institution for the relief of Curates who may be disabled by age or infirmity from the discharge of their clerical duties, or may be unappointed to any curacy. Their plan assumes the form of an insurance society,—the subscribers to which are entitled to an annuity when otherwise unprovided for or disabled.

We are in possession of some hints for the improvement of the plan of the Attorneys' Benevolent Institution—part of which we now proceed to lay before our readers for their consideration :—

1. It has been urged that the establishment should not be confined to Attorneys and Solicitors who have practised in the *Metropolis*, but that it should be extended to the whole of England and Wales. This is, doubtless, a very important point in the outset and constitution of the Society. In favour of its being limited to London, it may be said that the scheme will be more easily and efficiently managed if so confined,

and that the organization would necessarily be more complicated and difficult if it comprised the Provincial Profession.

On the other hand, we admit that it is desirable to unite the entire body in the proposed good work, and it is conceived that there would be difficulties in drawing the line with regard to London Practitioners entitled to the benefit of the Institution, inasmuch as many changes of residence take place: some coming from the country to town, and others leaving town for the country.

This, we presume, will be a question submitted for the determination of the General Meeting, which is intended to be called. Perhaps it may be expedient to communicate with the several Provincial Law Societies, and ascertain their opinion on the expediency of joining the whole Profession in furtherance of the proposed Institution.

2. We understand that some who zealously support the general measure, have objected to the proposed building of an Asylum or Hospital for the residence of the Pensioners,—conceiving that by whatever name it might be called, it would partake of the nature of an almshouse, which they deem derogatory to professional men. Further, that it would be very difficult to suit the tastes and dispositions of the inmates, and that there would be danger of dispute and contention. And lastly, that the land and building would absorb a large amount of the donations, and the expense of management, including officers and servants, would incumber the annual income and diminish the number of pensioners entitled to relief.

In answer to these objections, it is urged that if the *In-Pensioners* are strictly confined (as indeed they must be) to the respectable though unfortunate members of the Profession, the establishment would not degenerate into an ordinary almshouse. The Pensioners would be gentlemen who have associated in professional practice with their more successful brethren, and the rules and regulations of the House would preserve order and re-

gularity:—so that the community would, to a certain extent, resemble the Fellows of a College, having a good library to resort to, and each having chambers of his own. The pensions will be received (especially by those who have contributed to the funds), as a matter of *right* and not of mere charity. The admission into the Institution will, indeed, indicate the good character and conduct of the pensioner, as none other will be elected; the rules in this respect will tend to promote the respectability of the Profession, and the pensioners will be elected by their brethren, to whom they will be personally known. Some of the subscribers, we understand, are disposed to contribute largely towards this part of the fund, and consider a building—"a local habitation"—to be essential to the success of the design.

3. We have been asked whether the donors and subscribers to the Institution will consist of *Attorneys and Solicitors only*, or whether other branches of the Profession,—the Bench, the Bar, and the Proctors,—will be invited to contribute, as they do to the funds of the United Law Clerks' Society? So far as we can learn the views of the promoters of the Institution, the subscription will be confined to the Attorneys and Solicitors who have practised, or are practising, within the limits of the metropolis; and, considering their number and wealth, it is anticipated that a sufficient fund, economically managed, will be raised to meet most of, if not all, the pressing claims of the intended Pensioners.

4. Inquiry has also been made, "whether the relief should be limited to those who have subscribed to the funds of the Institution?" Of course, in the first instance, the most deserving and pressing cases would be considered with a view to immediate relief. It may be presumed that very few, if any, of the donors and subscribers will require assistance for some years to come; but hereafter, as applications are made, it may be presumed that attention will first be given to those who have contributed to the fund. If the income should permit it, probably an annual sum will be devoted to the aid of

persons who are not, or have not been, members of the Institution. The cases of those who have contributed whilst able, but have ceased from inability to continue their subscriptions, will, no doubt, be entitled to primary consideration.

5. As to the "ways and means" for establishing and supporting the Institution, we are informed that a considerable number of Solicitors have promised 100 guineas each, and some a larger donation. There are also several who will subscribe five guineas a year, others two, and the rest one, besides donations to the Building Fund.

We conceive, therefore, that by due exertion there can be no doubt of success, and we most heartily recommend the plan to the favourable consideration of our readers. We think that such an establishment is pressing needed, and will reflect credit on its promoters and the Profession in general.

The names of the Provisional Committee, and the Subscribers who have already signified their approval, are stated in our Advertisement pages.

---

## ALTERATIONS IN THE LAW.

---

### SUGGESTIONS OF ATTORNEYS AND SOLICITORS.

THE various projects for altering the jurisdiction and practice of the Courts of Law and Equity, the Law of Property, and the Practice of Conveyancing, continue to demand the constant attention of the Profession. Though some useful changes have been effected, they have been accompanied by much inconvenience and injury, as well to the Suitors as the Profession;—many alterations have been injudiciously made, and many improvements are still required. It behoves the members of the Profession, therefore, to unite in guiding the future measures for correcting real abuses, and satisfying the demands for further reform, so far as they are consistent with the due administration of justice.

The Bar is ably represented by several Quarterly and Weekly Journals, and it is manifestly just and expedient that the Attorneys and Solicitors should possess an Organ devoted to their peculiar interests. The LEGAL O

SERVER has been established at the instance, and is conducted under the supervision, of Solicitors of experience, for the purpose of supplying this desideratum and affording the means of ascertaining the sentiments of the Members of their Branch of the Profession, and of diffusing a knowledge of all subjects bearing on their welfare.

The Editor deems it essential again to call upon his Brethren to consider their present position and future prospects, and to communicate their suggestions for the promotion of their general benefit and advantage. It is of great importance that the opinions of Attorneys and Solicitors, as well in all parts of the Country as in Town, should be collected upon the various important topics which affect the position and welfare of their Branch of the Profession.

Letters addressed to "The Editor of the *Legal Observer and Solicitors' Journal*," will receive immediate attention.

### COSTS OF A SOLICITOR-TRUSTEE.

THERE are few subjects affecting the interests of Solicitors more urgently requiring attention than the rule which prohibits a Solicitor who is a trustee, and even a partnership of Solicitors, one of whom is a trustee, from making the usual professional charges in relation to the affairs of the trust.

Several Judges have lamented that the rule should ever have been established, and denounced it as unjust to Solicitors, but felt themselves precluded by the early decisions from laying down a different rule.

What then is the foundation of a rule thus inflexible and thus disapproved of, and how is it to be altered? Altered it certainly should be if unjust.

The rule has been stated by several Judges to be founded "on the principle that a trustee shall not be allowed to make a profit of his office of trustee" (See *Craddock v. Piper*, 19 L. J., N. S., Chan. 107; *Lincoln v. Windsor*, 20 L. J., N. S., Ch. 531; *Broughton v. Broughton*, 24 L. J., N. S., Ch. 190, and *Broughton v. White*, Leg. Obs. July 1, 1855).

In *Fraser v. Palmer*, 4 Younge & Coll. 517, Mr. Baron Alderson says,—“The principle is that the estate is to be protected by the unbiassed judgment of the trustee. Can a Solicitor who is a trustee be allowed to make a profit of the contest in which the estate is involved? If so he would have two interests in

opposition to each other. A trustee in such a situation has a duty to perform and a private interest. In some cases, if the costs now asked for were put into the scale, private interest would kick the beam.”

The cases do not seem to have been decided with any reference to the intention of the authors of the trust. Indeed, in a great majority of the cases which have come before the Courts, it was well known that the real intention and expectation of the parties was, that the Solicitor-trustee should continue to act for the trust estate on the same terms of remuneration as if he were not himself a trustee.

Are we to understand, then, that public policy or the policy of the law requires that a Solicitor-trustee shall not be allowed to receive remuneration for his professional services? If such be the policy of the law, the Courts would not give effect to express stipulations in contravention of it. But the Courts do. For where, as is now frequently done, the instrument creating the trust expressly provides that professional charges may be made, the Courts support such a clause.

This shows the inconsistency of the rule; for why should not the intention of the parties, whether expressed or to be inferred, be equally recognized?

The sound and just rule would be, that in all cases where the trust instrument does not indicate a contrary intention, the Solicitor-trustee shall be at liberty to make the same professional charges as if he were not himself a trustee.

How then are we to procure an alteration of the present rule? It seems to be admitted by the Judges that they are completely bound by the decisions, and that nothing but an Act of Parliament can accomplish the desired alteration of the law, and I think, therefore, that an effort should be made in the next Session of Parliament to obtain an Act for this purpose, which would not, I believe, encounter any very formidable opposition.

It may be said, that the simplest remedy is to exclude the operation of the present rule by inserting in all trust instruments an express authority to make the ordinary professional charges—no doubt the clause where inserted would secure all the Solicitor-trustee is entitled to—but it must be borne in mind that a great majority of the trusts now in course of administration have been created under documents not containing that clause, and there must be

a great number of wills of persons still living in which the clause is not inserted. In many cases the Solicitor feels a delicacy in apprising the testator or settlor of the necessity of inserting the clause, and omits it rather than incur the imputation that he is thinking of himself.

Besides, it often happens that the Solicitor was not one of the original trustees, but is selected for one on an appointment of new trustees being made.

It must not be supposed that this is a subject of little importance to Solicitors generally, —it is by no means a matter of partial interest. I venture to say that a very large proportion of the Solicitors are trustees under some will, settlement, or mortgage, or will be so at some time; and nearly every volume of Equity Reports furnishes an instance of the injustice done by the present rule.

May we not expect that this subject will receive consideration by the Executive of the Incorporated Law Society and the Metropolitan and Provincial Association?

The zeal which they have alike displayed in all that relates to the Profession, certainly encourages the hope that they will not be slow to grapple with so palpable a defect in our law.

G. W.

*Liverpool, 15th October.*

## LAW OF ATTORNEYS AND SOLICITORS.

### DELIVERY OF BILL OF COSTS, SUFFICIENCY OF.

IN an action by an attorney to recover the amount of his bills of costs, it appeared that they were headed "In the matter of the bankruptcy of John Robinson," and were signed by the plaintiff at the end, as follows: "This is the bill of Walmesley and Lucas. William Lucas, surviving partner of the said firm of Walmesley and Lucas." These were inclosed, without any letter or note, in an envelope addressed to "the Executors of the late Mr. John Roberts," upon whose guarantee the proceedings were taken, and were left by the plaintiff's clerk with a servant at the residence of the defendant, Roberts. There was no mention of the names of the defendants or of their testator in the heading or any other part of the bill.

The Judge of the County Court of Wem, Shropshire, having decided that there was a sufficient delivery within the 6 & 7 Vict. c. 73, s. 37, this appeal was presented.

*Pollock, L.C.B., said:—*

"The first point is, was there a good delivery of the bills of costs? That turns on the question whether the delivering of the bills to the person intended to be charged in an envelope addressed to him on the outside is a sufficient compliance with the Statute 6 & 7 Vict. c. 73. We are unanimously of opinion that it is. It may be that cases have been decided that apparently would lead to a different result, but the question in every instance must be decided upon the circumstances of the particular case, whether the bill has been delivered in pursuance of what the Statute requires. According to the case of *Manning v. Glyn*, 1 Jones' Exch. Rep. (Irish) 513, it would not be sufficient to deliver to the party personally a bill containing the items and charges and perfect in every other respect, unless the bill also contained a statement that the person to whom it was delivered was intended to be charged. But that is not this case. It is admitted that if the envelope were part of the letter and one piece of paper with it, that it would be sufficient. I think that we must consider that the envelope and inclosure are to be read together as one, and that the delivery of the bill in the envelope addressed to the defendant on the outside is as good as if there had been an address at the head of the bill." *Lucas v. Roberts*, 24 Law Journ., N. S., Exch., 227.

## REMUNERATION OF SOLICITORS.

### SUGGESTIONS OF THE COUNCIL OF THE INCORPORATED LAW SOCIETY.

[*Extracted from the Appendix to the Annual Report.*]

THE mode in which Solicitors are now paid gives them an interest in opposing improvement, and in continuing antiquated forms and technical modes of proceeding; in fact, to use the words of the late Lord Langdale, it makes it "almost compulsory upon the Solicitor, in his own defence, to put his client to very great and unnecessary expense, for the purpose of obtaining some remuneration for services in respect of which he cannot otherwise make a lawful demand." Such a system, so far as it is allowed to influence the Profession, tends to separate the interest of the client from that of the Solicitor in every stage of his employment. On the one hand, the interest of the client is to have his business completed as quickly and with as few technical forms as possible; on the other, the interest of the Solicitor is to create delay and to multiply and lengthen forms, in order that by these means he may be paid for services which otherwise would be remunerated inadequately, if at all.

It is now nearly 15 years since the Solicitors commenced their efforts to alter a system of remuneration which they feel to be so objectionable. In December, 1840, at the desire of Lord Langdale (then Master of the Rolls and their official chief), they drew up some sug-

gestions for improving the system of remuneration. The principal of these suggestions was the constitution of a Taxing Board invested with a most extensive and summary jurisdiction, and with discretion to apportion remuneration according to the nature and importance of the business transacted, to the skill and labour bestowed upon it, and to the responsibility incurred by the Solicitor. These views met the entire approbation of Lord Langdale, and, it is understood, of Lord Lyndhurst, the then Lord Chancellor; and, with the concurrence and assistance of the Solicitors the Six Clerks' Office was abolished, the office of Taxing Master was instituted, and the charges of Solicitors, for conveyancing business, were made liable to taxation, by which it was designed that the improved discretionary system intended to be introduced, should be made uniform and applicable to every kind of legal business, and that all the professional acts of Solicitors should be under the summary control of the Judges. The communications with Lord Langdale, recently printed by the Incorporated Law Society, fully bear out the foregoing statement, and show that, from the first, his lordship assured the Solicitors, that "if it should appear that any important improvement in the practice and proceedings of the Court would injuriously affect the fair emoluments of professional men," they might rely on the Court for giving "just remuneration to Counsel and Solicitors for services truly rendered by them to their clients."

After the establishment of the Board of Taxing Masters, Lord Langdale addressed to them a letter (dated 10th November, 1842), requesting them to report to him on the system of costs, "with a view, if practicable, of reducing bills of costs to a true statement of services actually performed, and of charges constituting a fair and just remuneration for the services so stated." In this letter his lordship points out forcibly, "that the system gives to the Solicitor, and every other legal practitioner, a direct interest to increase the length of documents, and the number of steps or proceedings in the transaction of business;" and "has in many cases made it almost compulsory upon the Solicitor, in his own defence, to put his client to very great and unnecessary expense, for the purpose of obtaining some remuneration for services in respect of which he cannot otherwise make a lawful demand." A copy of this letter Lord Langdale transmitted to the Incorporated Law Society, but they are not aware that any report was ever made by the Taxing Masters in accordance with his lordship's directions.

In full reliance on the intention of the Judges to carry out the principle of remuneration indicated in Lord Langdale's letter, the Solicitors assisted in preparing the Act for Consolidating the Law of Attorneys, which subjected conveyancing charges to taxation, and in getting the Bill passed through Parliament in the next year, 1843.

—Previously to this Act the charges for con-

veyancing business, though partly regulated by professional usage, were not liable to taxation. The rule of *quantum meruit* was the only legal test; and in case of dispute, it was decided by a jury. The transfer of the power of the jury to the Taxing Masters, and placing the business under the summary control of the Judges, was the price which the Solicitors agreed to pay for introducing the principle of "*quantum meruit*" into the rules for the taxation of costs. The price was paid by the Solicitors, but that which they were to have received in return has been withheld.

The Act having been passed, the Solicitors, on the 12th October, 1843, wrote to his lordship, requesting that General Orders should be prepared to give effect to the scheme which had been proposed, and received the following answer:—

"14th October, 1843.

"SIR,—I have received your letter, dated the 12th instant, and I will take the earliest opportunity of communicating with the Taxing Masters upon the important subject to which it relates; and, having first communicated with them, I will submit such observations as may seem proper to the Lord Chancellor.

(Signed) "LANGDALE.

"To the Chairman of the Incorporated Law Society."

Concurrently with the circumstances already referred to, the Equity Committee of the Incorporated Law Society were occupied through the years 1841, '42, and '43, in preparing suggestions for Lord Langdale and the Judges, and in assisting to draw up the numerous General Orders and Acts of Parliament then made for the improvement of the Court. Among other matters which necessarily came under consideration was the mode of dealing with the Masters' offices: and though the Committee came to no conjoint action on that subject, yet one of the members drew up and published (in 1841), and distributed among all the Judges and leading members of the Profession a plan for abolishing the offices and transferring the business into the Judges' Chambers, and for establishing a Chamber jurisdiction. This scheme (together with the almost insuperable obstacles presented to any permanent improvement by the present system of remuneration) was strongly pressed by the Solicitors on the attention of the Committee of the House of Lords, which sat on the Masters in Equity Jurisdiction Bill in 1851. Lord Brougham, at the close of the inquiry, tendered his own evidence to the Committee, and thus stated the conclusion at which he had arrived:—After referring to the divided responsibility which the system of Masters created, as one great cause of delay and expense in the Court, he expressed himself as follows,—“My opinion is clear (with the whole of the evidence) that the other cause is the perfectly faulty mode of remunerating professional men, Solicitors especially; but I do not except counsel. This



opinion is the result of my whole professional experience and observation, and it is not confined to proceedings in Equity. The subject is one of great difficulty, but is one of yet greater importance; and I feel assured that, whatever other changes are effected to improve our system, whether of Equity or Common Law, a large proportion of the evil will remain, unless this difficulty shall be grappled with and overcome."

Previously to the Chancery Commission being issued by the Crown, a Committee consisting of 30 Solicitors had been selected by the Council of the Incorporated Law Society, from their intimate acquaintance with the practice of the Court, and was deliberating on the improvements which ought to be made. A copy of the Committee's Report was transmitted to the Commissioners, and was presented to the House of Commons. Par. Pa. 1852, No. 216.

The Solicitors, in referring to this Report (which recommended the abolition of the Masters' Offices, and many of the other important reforms eventually proposed by the Commissioners), desire not to appropriate any merit due to the Commissioners, but to show that they have been instrumental in promoting improvements in the practice of the Court of Chancery.

In the Report just noticed and in all their communications with the Chancery Commissioners, the Solicitors took occasion to state the absolute necessity for a revision of the mode of remuneration concurrently with the alterations in the forms of proceeding, and they were led to believe that, whatever changes took place, the continuance of a full and fair remuneration to them would be provided for.

In 1852, the Act for abolishing the Master's Office, the Equity Jurisdiction Improvement Act, and the Sutors in Chancery Relief Act, received the Royal Assent. By section 38 of the first-mentioned Act, power is given to the Lord Chancellor, with the advice and consent of the Master of the Rolls, and the Vice-Chancellors or any two of them, to make general orders for regulating the fees and allowances to Solicitors. The Solicitors submit that the moral responsibility for the due and considerate exercise of the powers given is commensurate with their extent and magnitude. In pursuance of these powers various orders were made, the result of which, coupled with the change in the proceedings and practice, has been that the remuneration left to the Solicitors has been proved utterly inadequate. It is understood, that no practising Solicitor was consulted upon the table of fees; and that it was not submitted to the Board of Taxing Masters before it was published. The Solicitors submit they have just and deep cause to complain of this mode of exercising the powers conferred by the Act, and they would remark that the Judges of the Courts of Common Law, in exercising similar powers, have consulted the Taxing Masters, and the most experienced

Attorneys practising in their Courts, and have thus been enabled to settle scales of fees which have given general satisfaction to the suitor as well as to the attorney.

In considering the claims for redress, it may be well first to advert to the legal nature of the Solicitor's title to his fees, and to consider whether the interest of this officer of the Court in those fees differs from that of all the other Court officers. The Clerk in Court was originally a Solicitor who had established a partnership relation with a Six Clerk. Till the office was abolished, the Great Seal and the Courts of Law alike admitted that both Six Clerks and Clerks in Court had a legal interest in their fees, and refused to exercise the power of modifying the practice, so as to injure them; and when the officers were abolished, they received full compensation. It is submitted, that the Solicitor has an equal legal interest with the Clerk in Court to have his remuneration for actual work preserved.

Whether the very exceptional rule—which deprives the Solicitors of the right, common to all the rest of the world, of fixing their own rate of remuneration, either by contract with their employer, or by the application of the principle of *quantum meruit*—should be continued in its present full force, may be open to grave question; but it can hardly be contested that, so long as this rule prevails, the Solicitors should be secured against any injurious exercise of the very serious and important power which such orders as those complained of are made.

The number of years and great outlay devoted to the special education of Solicitors, the capital necessarily embarked on carrying on their Profession, and the exceptional provision directed specifically against them, by means of which the only other path of life which might be open to them (the Bar), is virtually closed,—all these combine to make it a matter of bare justice that they should be able to rely, with confidence, on the sufficiency of the remuneration assigned to their employment.

Papers have been submitted to the Master of the Rolls, showing the comparative profit allowed under the scale of fees before 1852 and since; but they will only show this in part, for many fees have been entirely abolished without any substitute, and no comparative statement is made in that respect. States of facts, abbreviation of pleadings, warrants, orders for confirmation of reports, and many similar proceedings have been abolished. These were for the main part purely mechanical work; and the fees upon them served to make up a fair remuneration for the more important work which required the time and attention of the Solicitor,—and which otherwise would have been, and still is, insufficiently paid for. The Solicitors have still the same material work to do, but no sufficient remuneration is allowed for it.

The following is the result of the comparison of Bills of Costs submitted to the Master of the Rolls:—

	Profits under the Old System.			Profits under the New System.		
	£	s.	d.	£	s.	d.
No. 4. Obtaining the Court's sanction to an arrangement . . . . .	44	4	11	4	11	2
No. 5. Apportionment of a fund . . . . . Plaintiff . . . . .	9	3	10	1	16	8
Ditto . . . . . Defendant . . . . .	2	6	8	1	1	0
No. 6. Division of fund, with affidavit of no settlement (the case in Chambers a difficult one) . . . . .	25	2	8	9	15	0
[More time occupied in the new plan.]						
No. 7. Production of Documents . . . . .	3	7	10	1	19	10
Another case . . . . .	3	16	0	1	13	2
[Thrice as much time occupied, and Principal's attention required.]						
No. 8. Application to pay in purchase-money . . . . .	3	0	10	2	7	4
[Thrice the time now required.]						
No. 9. Guardian and Maintenance . . . . .	10	15	0	7	19	10
No. 10. Ditto . . . . .	13	2	8	9	10	2
[Much more time now occupied, and Principal's attention required.]						
No. 11. Costs of Claim of Folio 13, up to Briefs for hearing . . . . .	6	9	4	4	15	2
No. 12. Costs of a Bill up to Motion . . . . .	8	2	4	8	1	6
[Disbursements heavier now.]						
No. 13. A recent case illustrating the under pay for settling Minutes and passing Orders in Registrar's Office . . . . .	10	19	0			
No. 14. Order to elect, and Motion . . . . .						
The same in Chambers before Judge . . . . .	-	-		2	17	2
Plaintiff's costs, without Counsel, Solicitor attending personally . . . . .	-	-		6	16	4
Defendant's Counsel employed, and only the Solicitor's Clerk . . . . .						
So that when a Solicitor does the Counsel's work he has more labour and less pay by two-thirds than if he employed Counsel . . . . .						
No. 15. Administration decree . . . . .	15	7	8			
On Bill . . . . .						
[Done by Clerk, with Counsel's assistance.]						
On Claim . . . . .	7	15	6			
[Clerk, with Counsel's assistance.]						
On Summons . . . . .	-	-		2	19	10
[Principal's own time, and many hours more required than on Bill or Claim.]						
No. 16. Revivor and Supplement . . . . .	14	9	8	2	3	8

Assuming these accounts to represent anything like an average of the effect produced by the changes in the practice and the altered scale of fees, they show a reduction of between 60 and 70 per cent. in the Solicitor's gross profit, leaving, therefore, of his former pay, only 30 or 40 per cent., out of which his fixed outlay for clerks, rent, interest, &c., has to be defrayed before he can derive a shilling of net profit for himself; the result being, in truth, that the Solicitor gets scarcely anything for his own labour.

It ought always to be borne in mind, that a fee is by no means a mere remuneration for the particular service denoted by it, but that it also covers all work intervening between the earning of the last previous fee in the case, and the earning of the one in question. It is in the nature of a toll, which pays not only for the use of the road at the spot where it was taken, but for the use of all the road from the place where the last toll was taken. The intermediate work, for which no charge is now allowed to be made is very often the most important to the interest of the client, and the most expensive to the Solicitor. All such work as the receiving, reading, writing, and forwarding, all the letters and documents accessory to the progress

of a cause—the keeping of all letters, indexing, &c., and the making all the entries in books, the making out and copying of bills of costs, is necessarily incidental to the practice of a Solicitor, and must, together with the interest of capital, rent, and office expenses, clerks' salaries, and allowances for bad debts, be covered by the pay in some way or other; and it is the existence of what may be called this dead weight, for which no pay is allowed, that contributes to make the new fees so inadequate.

Under the present system this singular anomaly arises—that the more slowly and the worse the work is done by the Solicitor, the better it pays him. An incompetent clerk costs least and earns most. For instance, to be so well prepared for the Judge's Chief Clerk, that the Solicitor can get through an account, pedigree, or any other matter of detail, in one sitting, may require perhaps a week's previous preparation. For such preparation the Solicitor was never allowed any fee!—while, if the

<sup>1</sup> By the General Order of February 2, 1855, the Judge may allow a fee not exceeding ten guineas in particular cases; but the allowance ought not to be restricted to those cases, nor should the amount be limited.

preparation were omitted, and that preparatory work really done in the officer's presence, the Solicitor was paid for it; it is the public officer's time only that is wasted. The scale and table of fees constructed by the Order of October, 1852, were opposed, in their principle and tendency, to those for which they were substituted; for under the old system, if a Solicitor prepared a long and intricate report, and settled it at one sitting before the Master, his fees were the same as if he had had the whole number of warrants and attendances which the length of the report justified, and thus he had the inducement of despatch, which is taken away by the operation of the present system.

The memorial to the Lord Chancellor in February, 1853, and the additional papers laid before him in April, 1853 (with the summary of suggestions submitted in March, 1854), state in detail the suggestions of the Solicitors for re-modelling the present system of remuneration.

The following is an extract from the summary of suggestions submitted in March, 1854:—

1. That the officer taxing or ascertaining the Solicitor's remuneration shall have regard to the actual skill and labour employed and responsibility incurred, and not merely to the length or multiplicity of the written forms of proceeding, and make such allowance to the Solicitor as his services fairly deserve, although no specific fee applicable to such services may be stated in the scale. See 8 & 9 Vict. c. 124.
2. That in carrying out this direction, all important attendances and correspondence in the progress of a cause or matter, including, in country cases, important letters between the country client and town agent, be allowed.
3. That a fee on ending be allowed for the term in which a cause or matter shall be brought to a conclusion, the amount to be in the discretion of the proper officer, who shall have regard to the importance of the case, the amount of property involved, and the skill and diligence exerted by the Solicitor.
4. That interest at 4 per cent. per annum be allowed to the Solicitor on all disbursements from the end of the year in which the same shall have been made.
5. That for avoiding frequent references for taxation (and in order that the officers before whom business is done may fix the proper remuneration), the Chief Clerks of the Judges be authorised, as far as practicable, to fix the sum to be paid for costs in any matter transacted in the Judge's chambers.

The summary contained two other suggestions on minor matters, which have been adopted by the Lord Chancellor, and also a List of Specific Fees which the Solicitors desire to have either allowed or increased.

The changes proposed do not necessarily in-

volve the introduction of the *ad valorem* principle of charge; but objections have been made to that principle upon grounds which show that the suggestions of the Solicitors in this respect have been misapprehended. It seems therefore desirable to state more explicitly that it has never been proposed to apply the principle to what may be termed *controversial* or *litigated* business; but to confine it to those cases in which the duties of the Solicitor are mainly *administrative*, or which relate to the sale, purchase, settlement, or administration of property, whether in or out of Court.

In advocating within these limits the application of a system of *ad valorem* charges, the Solicitors feel confident that they are following the direction indicated alike by the present state of public opinion and by the experience of the Court itself. The Select Committee of the House of Commons, by their Report of 1848, on the "Taxation of Suits in the Courts of Law and Equity by the Collection of Fees," reported as their opinion that the amount required for the maintenance of the Court of Chancery which the income of the suitors' fund is insufficient to pay, should be raised primarily by a poundage of a half per cent. upon all capital sums paid into Court; and on the income collected by the Accountant-General and Receivers of the Court. Accordingly, the Court Fees levied on the passing of Receivers' Accounts, which were previously regulated by the length of the accounts, have been commuted for a fee of one-half per cent. upon the annual rental. Upon the taxation of Solicitors' costs, the fees which, in the hands of the Clerks in Court, were fixed by the length of the bill of costs, are now levied by means of a per-centage on the amount. In lunacy, also, the system under which one-half of the Court fees was levied by a per-centage on the lunatic's income, has been found to work so well, that latterly the whole of the Court fees are levied by the same method. The Receivers of the Court of Chancery have (like other Receivers) always been paid by a per-centage on the rental collected. In the probate and administrative business of the Ecclesiastical Courts, which it is now proposed to transfer to the Court of Chancery, the fees are fixed upon an *ad valorem* scale, and it is understood that this system will be continued on the transfer of the business to the Court of Chancery. The mode of paying architects, brokers, receivers, and all agents whose employment relates to property in any form, is almost invariably by means of a per-centage. In fact, the Solicitors believe that whenever an opportunity has been afforded to the Public to fix the rate or mode of pay for work done in connection with property, the *ad valorem* principle has been invariably adopted as forming the natural and simple index to the value of the services rendered. The Solicitors think that the principle of remuneration adopted by the Court and the Public as the best for paying its other officers or agents, is equally applicable to themselves in analogous cases.

On the several grounds before stated, the Solicitors most respectfully submit that the Orders of 1852 ought at once to be revised; and they ask that no orders for a similar purpose shall be made in future, until, by seeing them in draft, they have had the opportunity of being heard upon any objections which they may have to make to them.

The importance to the Public, as well as to the Profession, of a revision of the existing system of remuneration has been universally admitted: and yet no commission or committee has ever been appointed to consider the subject. It does not come within the province of the Chancery Commission, which is composed almost exclusively of Barristers, and has not a single Solicitor upon it.

The Solicitors submit, that the jurisdiction is committed by the Legislature to the Judges of the Court; and if it be not convenient to them to exercise it, by hearing evidence in the usual mode of judicial inquiry, they suggest that the question should be referred to a Commission, to be presided over by one of the Judges, and to consist of Taxing Masters, Chief Clerks of Judges, and Solicitors, with instructions to report the result of their inquiries, and the remedies proposed by them, to the Judges of the Court.

The effect upon the Profession of the recent changes is so serious and injurious—they have been decided upon with so little inquiry—without, as is believed, consulting with the persons most skilled and experienced in the subject—certainly without an opportunity afforded to the parties chiefly affected by them of being heard, that the Solicitors cannot believe that their respectful, but firm and earnest, appeal to the justice of those to whom the Legislature has confided an important duty will have been made in vain.

*Incorporated Law Society,  
12th April, 1855.*

## THE INCORPORATED LAW SOCIETY.

### OBJECTS AND ADVANTAGES OF THE SOCIETY.

*To the Editor of the Legal Observer.*

SIR,—Having perused the last Annual Report of the Council of the Incorporated Law Society with much satisfaction, and having heard some expressions of dissent regarding the operations of the Society, I venture to address you as the Editor of "*The Solicitors' Journal*," on some points which cannot be conveniently deferred until the next Annual Meeting in the month of June next.

I observe that the Council give a very lucid account of the Acts of Parliament which have passed since the previous Annual Meeting in June, 1854, and of the several Bills pending before the Legislature in June, 1855,—all of

which have from time to time been taken into consideration during their progress through the Houses of Parliament. They next enter upon the important subject of the Remuneration of Solicitors and the Rules relating to the Taxation of Costs, on which they have been engaged for several years; and the Appendix to the Report contains a full statement of their labours. I have no doubt that the result of their exertions will be highly beneficial to their professional brethren. Then they proceed to the subject of Legal and General Education, on which an able and elaborate report appears in the Appendix. The proposed New Courts and Offices to be erected in the vicinity of Lincoln's Inn and the Temple forms an important subject of consideration, and the steps taken by the Council to promote the measure are set forth in the Report. The questions which have arisen during the year on the Usages and Practice of the Profession are stated, and an account is also given of the cases of Malpractice which have occurred during the last twelve months. We are also informed of the result of the Examination of Articled Clerks during the preceding four Terms, and of the Annual Registration of Attorneys. The Report concludes with a concise statement of the general affairs of the Society, the state of the Library, the success of the Lectures, and the increase of members.

I have thus adverted to the labours of the past year, because complaints have been made that the Society is not so useful as it might be, and that the governing body do not in some respects render sufficient service to the branch of the Profession which it represents. I believe that this dissatisfaction is expressed only by a comparative few, and that they are not adequately acquainted with the objects of the Society and are ignorant of much that is done by the Council in behalf, not only of the members by whom they are appointed, but for the advantage of the Profession at large. I sometimes hear it asserted that "the Society does nothing,"—just because it does not and cannot do everything that everybody requires to be done. At other times it is asked "of what use is the Society?" This question is put because some impracticable measure has not been adopted, or some exertions made which have not been successful. One would suppose that the Council of the Law Society were empowered by the Legislature to make or unmake laws,—to compel the executive government to grant

all that the members of the Society or the Profession require, and to call into immediate effect all their suggestions, wise or foolish!

When the present state and prospects of the Profession are considered, I think that the merits and services of the Society should be duly appreciated, and not undervalued. It may be, that the Council,—conscious of the discharge of their duty,—do not condescend to notice the floating rumours of complaint which arise from want of information, and are generally exaggerated. Doubtless they know that censure is liberally bestowed on all persons in authority;—grumbling is a national privilege, and nothing human is perfect.

Among these grumblers are many who want a Law Society to be constructed after their own peculiar notions. Some of them desire only a luxurious club, and care nothing about the status of the Profession or its interests; they require billiard and smoking rooms, couches, and easy chairs. Others despise these amusements, and demand stirring agitation on all subjects of Law Reform, especially where the emoluments of the Profession are concerned. On the one hand, the Society is called upon to promote never-ending change; on the other, to resist all innovation, even when beneficial. One class favours contention and excitement:—another would indulge in sloth and ease. Neither of them is content with moderate progression, and cautious measures of improvement.

It is very probable that if these dissatisfied parties were present at the deliberations which take place regarding the various projects which affect the Practitioners of the Law, they would readily concur in the conclusions at which the Council arrive. Let it be recollected that the members of the Council, according to the provisions of the Charter must be in actual practice as Attorneys or Solicitors, and therefore they are personally interested in the welfare of the general body of the Profession, as well as of the members of the Society. Their judgment, consequently, on the course to be adopted on these disputed occasions is entitled to all possible respect.

I have thought it my duty thus to address my fellow members on the differences of opinion to which I refer, because I think those differences tend to impair the usefulness of the Society, prevent the increase of its members, and impede the extension of its influence.

ATTORNATUS.

We willingly find place for the remarks of our Correspondent on the usefulness of the Incorporated Law Society; and add a few points of information regarding the constitution of the governing body and its mode of proceeding. At first the Committee of Management were required to hold 10 shares of 25*l.* each, and the members possessed a vote for each share. By the new Charter (under which the shares were relinquished) every members of 10 years' practice is eligible for the Council, one-third of whom retire annually. It is therefore obvious that a rapid change might be effected, if the Council did not truly represent the constituency. Frequent changes, however, take place by deaths and retirements; and we believe that of the 30 members of the Council, only five remain of the first Committee of Management.

The mode of proceeding shows the great attention the Council bestow in discharging the duties of their office. They assemble every week, and there are frequent meetings of the several Committees on the different departments of the Law and Practice.

As these pages will be laid before the London Profession in general, it may be useful to give the following concise statement of the objects and advantages of the Society:—

"This Society was established, under a Deed of Settlement, in 1827, incorporated by Charter in 1831, and commenced its operations in 1832. In 1833 it instituted several courses of Lectures; in 1836 it was empowered to examine all Applicants for admission on the Roll; in 1843 was appointed Registrar of Attorneys, and in 1845 obtained a second Charter containing extended declaratory powers.

As a legally recognised body of practitioners, the Council of the Society have co-operated in promoting measures calculated to afford facilities for professional education and practice, for the remedy of abuses, and for sustaining the just claims of their branch of the Profession to the respect and confidence of the community at large. In furtherance of these objects, and for conducting the general business of the Society, the Council and their different Committees hold regular Meetings every week.

They examine all Bills before Parliament relating to the Law, and state to the proper authorities such objections as occur to the Council on the proposed Enactments, and suggest such additions and alterations therein as appear to be expedient for improving and perfecting them. In these and the like instances they take such measures as seem best calculated to promote the welfare and respectability of the Profession.

The new Rules and Orders from time to

time issued by the several Courts of Law and Equity are printed at the expense of the Society and forwarded to the Members; and other important professional information is communicated in the Annual and Special Reports of the Council.

On their opinion being required as to any doubtful or disputed professional usage, particularly in Conveyancing Practice, the Council carefully consider the matter, and register their decisions in a book kept for that purpose, which is accessible to the Members of the Society.

Lists of persons applying to be admitted and re-admitted on the Roll of Attorneys and Solicitors, or to renew their certificates, are printed and circulated in order that improper persons may be opposed. Where there is sufficient ground, the Council undertake, on behalf of the Society, to apply to the Courts to remove persons from the Rolls who have misconducted themselves as Attorneys, and in other respects aid in the supervision of Professional Practice.

The Society already comprises a great proportion of the most respectable practitioners in town, and a considerable number practising in the country; and the Council are desirous of calling the attention of their Professional brethren to the advantages afforded by the Establishment.

With a view to extend the usefulness of the Society, and bring together a larger proportion of the Members of the Profession, particularly the junior practitioners, the Admission Fee has been reduced to 5*l*.

In order to be admitted into the Society, the Applicant must be proposed by two Members, his name affixed in the Hall for 14 days, and approved on ballot by the Council. The Annual Subscription for Town Members is 2*l*., and for Country Members 1*l*.

Every Member, immediately on his admission, becomes entitled to the benefits of the Institution, comprising the following departments:—

1. *The Hall*, open daily from Nine o'clock in the morning till Ten at night, is furnished with the Votes and Proceedings of both Houses of Parliament, the *London Gazette*, Morning and Evening Newspapers, Reviews, and other useful periodical publications. Here also Members of the Profession, residing in different parts of the town or country, are enabled to meet one another by appointment, and for all purposes of business.

2. *The Library* is open daily from Nine o'clock in the Morning until Nine at night, and on Lecture Evenings till Ten, except on Saturdays, when it is closed at Four. It comprises nearly 12,000 volumes, and is divided into two parts; an Inner Library, for the exclusive use of Members, containing Parliamentary Works, and Public Records, County History and Topography, Genealogy, Heraldry, and Miscellaneous works; an Outer or Law Library, comprising the Statutes, Reports, Digests, Treatises, and other works relating to the Law, which is

open to Students as well as Members. In case any scarce book in the Library should be wanted by a Member for production in any of the Courts of London or Westminster, the Librarian, or a Messenger, will attend with it under the authority of the President, or Vice-President, or two members of the Council.

*The Articled Clerks* of Members are admitted to the Law Library on payment of an annual subscription of 1*l*.

3. *Lectures* on the different branches of the Law are regularly delivered in the Hall from November to March inclusive, and are particularly useful, in consequence of the various and extensive alterations, both in the principles and practice of the Law, which have already taken place, and are still in progress. The members of the Society are entitled to attend these Lectures gratis; and their *Articled Clerks* are admitted on payment of 1*l*. for each set of Lectures, or 2*l*. for the whole. The *Articled Clerks* of Gentlemen not members pay 1*l*. 10*s*. for each set, or 3*l*. for the whole; and other Students, not falling within either of those classes, are admitted on paying 2*l*. for each set, or 4*l*. for the whole.

4. *The Registry Office*, for the use of Members and their Clerks, is open daily from Nine in the morning until Eight at night. Here are kept an account of Appeals in the House of Lords, the General and Daily Cause Papers, lists of Petitions in causes in the Courts of Equity, and in Lunacy and Bankruptcy, the Sittings Papers, Peremptory Papers, Special Papers, and Papers of New Trials in the Courts of Law.

Boxes are provided in the ante-room for Members, in which they may deposit their papers, thus saving the trouble and expense of carrying them to and from the Courts and Offices. Books are also kept for entering particulars of property to be sold or purchased; of money to be lent, or wanted to be borrowed on mortgage or otherwise; of applications for partners, and for articled, managing, and other clerks.

5. *Rooms for Meetings of Arbitrators*, or any other professional matter.

6. *Fire-proof Rooms and Closets* are provided for the deposit of Deeds, &c., in separate boxes; and rooms are let, either for temporary or permanent purposes, each renter having a private key of his own room or closet, to which no other person has access.

7. *The Club* consists of Members of the Society who pay an entrance fee of 5*l*. 5*s*., and an annual subscription of 5*l*. 5*s*. for Town Members, and 3*l*. 3*s*. for Country Members."

In considering the services of the Incorporated Law Society in behalf of the Profession at large, we may notice the Annual Certificate Duty, which amounted to 120,000*l*. a-year (of which 90,000*l*. was paid by the Attorneys of England and Wales), and which was reduced one-fourth principally by the exertions of the Council during many Sessions of

Parliament, and at a large expense. Thus 30,000*l.* has been annually saved to the Profession.—ED. L. O.

## LAW OF COSTS.

### IN ERROR, ON REVERSAL OF JUDGMENT BELOW.

THE plaintiff in an action had obtained judgment in the Court of Queen's Bench (2 Ellis & B. 118); but on error being suggested, the Court of Exchequer Chamber reversed the judgment (3 Ellis & B. 642). The Master on taxation having refused to allow the defendant any costs in error, this rule had been obtained to review the taxation.

Lord Campbell, C. J., said,—“I am of opinion that the Master did well to disallow those costs. Formerly they could not have been claimed; and we are to see whether the law has been altered in that respect. It has not been altered by any enactment; for the Common Law Procedure Act, 1852, sect. 148, says merely that the writ of error shall be abolished, and the proceedings in error be a step in the cause; altering the form of the proceeding in error, but not its effect. Then has it been altered by any rule which the Judges had authority to make? If I adopted Mr. Ball's construction of the rules, I should doubt if the Judges had authority to alter the Statutes which regulate the giving of costs. But on a fair construction of those rules they mean that, where the costs are allowable, they shall be so taxed. They are regulations as to the mode in which the amount of costs shall be ascertained where by law they may be claimed, not affecting the liability to costs.

Coleridge, J., added :—“It is admitted that before the Common Law Procedure Act, 1852, then costs were not claimable. The Court has no power to impose costs. We must therefore discharge this rule unless we find that, directly or indirectly, these costs have been given by the Legislature. It would be a very strong thing to infer from the words ‘error shall be a step in the cause,’ that this step and all which followed it were to carry costs.

“Then as to the rules, I think they bear the interpretation given by my lord. If they did not, I should think them beyond the authority given to the Judges who framed them. That authority is in the Common Law Procedure Act, 1852, sect. 223. All the language of that section points to the framing of rules for regulating the manner in which the existing rights

should be ascertained and enforced, not for giving new rights.”

Wightman and Crompton, J. J., concurred, and the rule was discharged. *Fisher v. Bridges*, Ellis & B. 666.

## INNS OF CHANCERY.

### To the Editor of the Legal Observer.

SIR,—I have read the several articles in the *Legal Observer* relating to the Inns of Chancery, particularly the statement and remarks made in the Number of the 6th October, in which you call attention to the regulations of the Inns of Court by which in 1825 and 1828 the Attorneys and Solicitors and their Articled Clerks were excluded from the Inns of Court, and yet that the Benchers of those learned societies retain the rents received from the Inns of Chancery, the members of which you are aware are always Attorneys.

It is very remarkable that the old lease of Furnival's Inn expired a short time prior to the Rules made by the Inns of Court for the exclusion of Attorneys. It is certain that the principal and antients of Furnival's Inn went into commons in their old hall down to the year 1817. There is a report of the trial of an action in 3 Campb. 168, of *Hussey v. Crickitt*, brought upon a wager “laid in May, 1809, when the plaintiff, the defendant, and seven other gentlemen, were dining together in Furnival's Inn Hall,” regarding the ages of some of the members. The wager was for “a rump and dozen.” An objection was taken before the Court that it was void for uncertainty, but the Court took judicial notice that “a rump and dozen” meant “a good dinner and plenty of wine,” and decided for the plaintiff, giving him the amount of the tavern bill. In addition to this evidence, there are several Solicitors still alive who are well acquainted with the “keeping of commons” in Furnival's Inn Hall down to 1817.

I agree with you that the neglect of the remaining antients of that Inn of Chancery to renew their lease ought not to deprive the Attorneys of the improved rents arising on the new building, and which at the expiration of the lease to Mr. Peto, the builder, will amount to several thousands a-year, as appears by the proceedings in a suit in Chancery since the builder's death. You have suggested a doubt as to the proper persons entitled to receive and distribute these rents. Now I would suggest that the attorneys who occupy chambers in Furnival's Inn should unite with the surviving members of the old society and re-constitute it, and then make application to the Benchers of Lincoln's Inn for the payment of the improved rent, minus the old quit-rent of 10 marks, and place themselves in a position to institute the necessary proceedings either in the Court of Chancery or to apply to Parliament for redress.

A SOLICITOR.

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE Committee have received notice, that the following papers will be read at the Annual Provincial Meeting of this Association, to be held at Birmingham, on Monday, the 22nd inst., at two o'clock:—

1. Observations on the working of the system in America, of not enforcing a division between the Bar and Solicitors. By *E. W. Field, Esq., London.*
2. Defects in the Law of Debtor and Creditor practically considered. By *M. D. Lowndes, Esq., Liverpool.*
3. On Conditions of Sale. By *Richard Caparn, Esq., Holbeach.*
4. Some Suggestions on the Consolidation of the Statutes. By *Arthur Ryland, Esq., Birmingham.*
5. Sketch of the Organization of the Profession; as it ought to be, and as it is. By *William Shaen, M.A., Secretary to the Association.*

After the reading of each paper it will be discussed by the members present, if they be so minded.

The place of meeting is the Theatre of the Birmingham and Midland Institute, 7, Cannon Street.

The Members will afterwards dine together at Dee's Royal Hotel, Temple Row; the tickets for the dinner being 5s. each, exclusive of wine.

A further Meeting will be held at the Theatre of the Institute the following day at 10 o'clock A.M., to continue the discussion of papers.

It is requested that the members on their arrival will enter their names and addresses in Birmingham in a book placed for that purpose in the Geological Museum of the Institute, which has been placed at the service of the Association as a reception-room.

The Committee feel very strongly, that to give this Association the weight and influence it should possess, and without which its power of usefulness is necessarily limited, it ought to have largely increased support; and they take this opportunity earnestly to entreat the members, and especially those in the metropolis, to use their best endeavours to obtain an addition to their numbers.

## CHARGES OF LAW STATIONERS.

### ENCROACHMENTS ON SOLICITORS.—CHEAP AGENCY.

*To the Editor of the Legal Observer.*

SIR,—As your Journal is the unwearied exponent and advocate of the Statutes, Rules, and privileges appertaining to the Legal Profession, I am induced to draw your attention to a circular just issued by a professedly cheap stationer, and which has been most extensively circulated amongst country Solicitors, wherein he professes, for almost nominal fees, to search

for crown debts and judgments, to obtain the execution of deeds by parties resident in London, to search at Somerset House for certificates of births, marriages, and deaths, and to obtain copies and extracts from wills at Doctors' Commons, to register joint-stock companies' returns, and to pass legacy and residuary accounts, and obtain return of probate duty, &c.; also to enrol deeds in Chancery, and the rules of benefit and building societies, and to file certificates of acknowledgment by married women, and other agency business (*save and except that of taking out country Solicitors' certificates*). This, coupled with the fact of the great number of conveyances for building societies, agreements, leases, &c., which have been, and are now being, daily printed and lithographed by cheap stationers, for unprofessional persons, principally for secretaries of building societies, the surveyors and land agents of noblemen and others, conjoined with the past, present, and future reforms in the law, it appears almost certain, that the vocation of the certificated and duly qualified Solicitor is drawing to a close.

It is useless to tell the public of the evils arising from being their own lawyers, and how deeply they are interested in the responsibility, talent, and skill of their professional advisers. I have often urged, that if a Solicitor commits an error, he feels that he is responsible for it. Now, this alone is a great advantage to the client;—for instance, a case is within my own experience, of a respectable legal firm in New Square, Lincoln's Inn, who, through the omission of a clerk in not searching diligently for judgments, a certain mortgage security was deemed inadequate, whereon the principal of the firm, without the slightest solicitation, paid to the mortgagee the 700l. advanced, with interest, *out of his own pocket*, as he considered the act of the clerk to be that of the firm.

I could quote, during my 32 years' experience, many similar instances of honourable conduct on the part of the Profession, but the above will suffice to show the public, as well as country Solicitors, the importance of placing their business in the hands of responsible professional men—whether it be in town or country.

It has been well said, "that it is not all gold that glitters:" so it is with cheap law. I recollect an instance, where through an unprofessional person, the steward of a nobleman, using a printed form of lease, which contained clauses in opposition to the power of the donor, the reversioner, when he came into possession, ejected the whole of the tenants, some of whom had laid out between one and two thousand pounds upon their farms.

The same remark applies to cheap law stationery. How few Solicitors consider of the number of folios which should be put into a brief sheet; they will find that the seemingly cheap sheet is only a half one, as allowed by the Taxing Master, and sometimes only the third of one; whereas the respectable and legitimate law stationer gives a full one,—and to test it is but too happy to charge his customers by the



folio, which is the most honourable mode of charging, inasmuch as the Solicitor's bill is taxed by the folio. Common sense would dictate that this is the proper mode of paying the law stationer, and would save on taxation a great deal of trouble to the Solicitor as well as Taxing Master.

JOHN ROBERT TAYLOR.

54, Chancery Lane, 17th Oct., 1855.

## NOTICES OF NEW BOOKS.

*Metropolis Local Management Act.* By JAMES J. SCOTT, Esq., Barrister-at-Law, Author of "Law and Practice of Local Boards of Health," and other Works. London: Knight & Co., 90, Fleet Street.

THIS work seems from its dedication to Sir Benjamin Hall, and its publication by Knight & Co., the publishers to the Poor Law Board and Board of Health, to be the authorised edition of the recent important enactment, which has effected what may justly be termed a *revolution* in the management of the local affairs of the metropolis. To any edition of this Statute the affectation of "practical notes," or the sub-joining of "decided cases," would mislead the unwary. Mr. Scott has wisely done no more than what was to be done, and what he is well qualified to do,—he has abstracted the measure itself in an introduction, and added a copious index to its provisions. His work should be in the hands of every vestryman or vestry clerk, and indeed of every one interested in having our local affairs properly administered.

## NOTES OF THE WEEK.

LECTURES AT THE INCORPORATED LAW SOCIETY.

THE Lectures on Equity and Bankruptcy

will be delivered by Mr. Joseph T. Humphry; on Conveyancing by Mr. Baggallay; and on Common Law and Criminal Law by Mr. Malcolm Kerr.

The Lectures will commence on Friday, the 2nd November, and be continued every Monday and Friday evening to the 21st December, and be resumed on the 7th January.

The subscription for the three Courses payable by the Articled Clerks of Members of the Society, is 2*l.* only, or 1*l.* for each course separately. The Articled Clerks of Solicitors who are not members pay one-half more, and strangers double fees.

## PARLIAMENTARY RETURN OF SALARIES OF JUDGES AND OFFICERS.

A return has just been printed to an order of the House of Lords of 27th March last, of the amount of salary of all the Judges and Officers of all the Courts, and the Fund out of which they are paid; also the Fees collected from Suitors and the appropriation thereof. There seems a marked difference in the salaries of the officers in Chancery and Common Law. In Chancery, the Registrars' salaries vary from 2,000*l.* the senior to 1,250*l.* the junior, Taxing Masters 2,000*l.*, Examiners 1,500*l.*, Judges' Chief Clerks 1,200*l.*, with power to increase to 1,500*l.*, Clerks of Records and Writs 1,200*l.* Now, the Common Law Masters (about half of whom are Barristers and the rest were Solicitors) combine in the duties of their office the business of Taxing Masters, Registrars, Examiners, the investigation (like the Chief Clerks) of matters referred to them, and the superintendence of the Records of the Court. For all these duties only 1,200*l.* a-year is awarded. It was some time ago suggested that the Masters should relieve the Judges of summonses for time, the administration of oaths, and other routine matters; and it was proposed that the salary should be increased to 1,500*l.*

We think that the Chancery Officers are not overpaid, but the Masters of the Superior Law Court are evidently under-paid.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

### Master of the Rolls.

Turner v. Turner. July 4, 1855.

MARRIED WOMAN.—ASSIGNMENT OF REVERSIONARY INTEREST IN LAND DIRECTED TO BE SOLD.

*A married woman, by deed acknowledged, and in which her husband joined, assigned her interest under the will of a testator, consisting of a share in the proceeds of the sale of real and personal estate upon the determination of a life estate: Held, that the assignment was good, although made before the death of the tenant for life.*

A QUESTION arose in this administration

suit, whether an assignment was valid by a married woman, Mrs. Elliott, of her interest under the will of a testator, consisting of a share in the proceeds of the sale of his real and personal estate upon the death of his wife. It appeared that the assignment took place before the determination of the life estate by deed, in which her husband joined, and which was duly acknowledged by her.

Shebbeare, Hobhouse, and Baggallay for the several parties.

The Master of the Rolls, held, that the assignment was valid in accordance with the decision of Vice-Chancellor Wood in *Brigg v. Chamberlain*, 18 Jur. 56.

## Vice-Chancellor Wood.

*In re Holden's Estate.* July 31, 1855.

**LANDS' CLAUSES' CONSOLIDATION ACT, 1845.—PAYMENT OF COSTS OF INVESTMENT AND PAYMENT OUT OF COURT BY RAILWAY COMPANY.**

*A railway company had paid into Court the purchase-money of lands taken before the passing of the Lands' Clauses' Act, 1845 (8 & 9 Vict. c. 18), and it had been invested. Their Act (the 3 & 4 Wm. 4, c. xxxvi.) made no provision as to the payment by them of the costs of investment and payment out of Court, although the Act passed on their amalgamation with other companies (9 & 10 Vict. c. cccv.) incorporated the Lands' Clauses Act in the usual manner: Held, that the railway company were not liable to the costs of a petition for payment of the dividends to the parties entitled.*

*The decision of Lord Truro in Ex parte Eton College, 20 Law J., N. S., Ch. 1, only refers to the exercise of new powers under the new Act, and not to a transaction completed before the Company were liable to costs under the 8 & 9 Vict. c. 18, s. 80.*

It appeared that before the passing of the Lands' Clauses' Consolidation Act, 1845 (8 & 9 Vict. c. 18), the purchase-money of certain land taken by the London and Birmingham Railway Company had been paid into Court and invested, and that in July, 1846, the London and North Western Railway Company was formed of the above, together with two other railway companies. There was no provision in the London and Birmingham Railway Act (3 & 4 Wm. 4, c. xxxvi.) as to the payment of the costs of investment and payment out of Court of the purchase-money of lands taken, although in the London and North Western Railway Act (9 & 10 Vict. c. cccv.) the 8 & 9 Vict. c. 18, was incorporated in the usual manner.

By sect. 80 of this Act it is enacted, that "in all cases of monies deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith," "it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; that is to say, the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of Court of the principal of such

moneys, or of the securities wherever the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants."

*Springall Thompson* now appeared in support of this petition for payment of the dividends on the purchase-money to the parties entitled, with costs, citing the decision of Lord Truro, *Ex parte Eton College*, 20 Law J., N. S., Ch. 1.

The Vice-Chancellor (without calling on *Speed*, contra, for the railway company) said, that the case cited only showed that a railway company could not avail themselves of the new powers under their Act without incurring the new liabilities thereby created, and did not refer to a case like the present, where the whole transaction was completed before the passing of such new Act and under the powers of a former Act, which did not impose costs. The order would be therefore made without costs.

## Court of Exchequer.

*Morgan v. Fernihaugh.* June 12, 1855.

**COSTS OF THE DAY.—SIDE-BAR RULE FOR, OBTAINED WHEN DEFENDANT ABSENT.**

*Where a defendant was absent upon a cause being called on at the assizes for trial pursuant to notice, a side-bar rule under rule 39 of Hilary Term, 1853, for the costs of the day, obtained on the plaintiff's absence; was discharged.*

It appeared that notice of trial had been given in this action for the Liverpool Assizes, but that no briefs had been delivered on either side to counsel, nor were the attorneys of either party present when the cause was called on; although the defendant's attorney had attended for four days at the assizes. A side-bar rule for the costs of the day having been obtained by the defendant, this rule ~~was~~ had been granted to set it aside.

By rule 39 of Hilary Term, 1853, it is provided, that "the costs of the day for not proceeding to trial or to execute a writ of inquiry may be obtained by a side-bar rule, on the usual affidavit."

*Milward* showed cause against the rule, which was supported by *Brett*.

The Court said, that if the defendant had been present he might have craved judgment of nonsuit, but by his neglect he had, as much as the plaintiff, occasioned costs. The rule would accordingly be made absolute to discharge the side-bar rule.

\* \* We have nearly exhausted our stock of Reports of the *Practice* and important Decisions of the legal year 1854-5, and do not deem it expedient to "fill up" with the remaining cases, which for the most part relate to particular and unimportant points. Besides, the "regular reports" are now carried down to a very recent period, and our readers will find the most useful of their contents duly noted in various articles week by week.

## ANALYTICAL DIGEST OF CASES,

SELECTED AND CLASSIFIED.

## House of Lords' Appeals.

## AGENT.

See *Corporation*.

## APPEAL.

See *Costs*, 2.

## ALTERATION OF JUDGMENT.

*By Act of Parliament.*—Where erroneous principle.—A decision of this House when once pronounced in a particular case is conclusive in that case, and cannot be reversed except by Act of Parliament; but if the House should be afterwards of opinion that an erroneous principle had been adopted in the first case, the House would not be bound in any other to adhere to such a principle. *Wilson v. Wilson*, 5 H. of L. Cas. 41.

Case cited in judgment: *Tommey v. White*, 3 H. of L. Cas. 68.

## CHARITY.

*Charge on Estate.*—*Negligence of donees.*—*Parties.*—If a charity is entitled to a particular sum as a first charge on an estate given to certain persons, and the estate is amply sufficient to secure payment of that sum, the fact that a portion of the estate has been lost by the alleged negligence of the donees of the estate, will not of itself justify an information on behalf of the charity against such donees.

Where a portion of an estate held under such circumstances was charged to have been improperly sold, the purchasers must be included as parties in any such information.

Where such portion consisted of land held upon a renewable lease, and the lessors were entitled to refuse a renewal, and the bargain was in fact made with them before the period for renewal arrived, such bargain, made under the circumstances, does not afford matter of complaint against the donees of the estate. *Mayor, &c., of Southmolton v. Attorney-General*, 5 H. of L. Cas. 1.

And see *Costs*, 1.

## CONTRACT.

*Under seal with incorporated company.*—*Verbal instructions varying.*—*Quantum meruit.*—A contractor agreed with an incorporated company to do certain works, the contract being under seal. In this contract there was a stipulation, that if the company should think proper at any time to make any addition to the original works, the company should be at liberty to do so on giving him written instructions for that purpose, signed by the principal or assistant engineer. A verbal arrangement was afterwards made by the principal engineer for the execution of certain extension works, allowing for a variance in the prices, but stipulating that, with the exception of that variance, all the provisions of the contract should be considered as applicable to the extension work. This work was executed by the contractor under this arrangement.

*Held*, that he could not afterwards reject the

terms of the contract, and claim remuneration for the work as upon a *quantum meruit*, nor could he ask in Equity for accounts to be taken independently of the contract. *Ranger v. Great Western Railway Company*, 5 H. of L. Cas. 73.

And see *Railway Company: Unliquidated Damages*.

## CORPORATION.

*Fraud.*—*Fraudulent acts of agents.*—A corporation of itself cannot be guilty of fraud, but where it can only accomplish the object for which it was formed through the agency of individuals, who act fraudulently, the corporation stands in the same situation with respect to the conduct of its agents as a private person would have stood had his agent so misconducted himself. *Ranger v. Great Western Railway Company*, 5 H. of L. Cas. 72.

## COSTS.

1. *On charity information.*—In an information against the donees of a fund on which there was a charge for the benefit of a charity, the prayer of the information was granted, and inquiries were directed.

This House reversed the decree of the Court below, and ordered the information to be dismissed, but only with costs up to the hearing, upon the ground that the Court below having directed the inquiries, the relator was entitled to proceed upon that direction. *Mayor, &c., of Southmolton v. Attorney-General*, 5 H. of L. Cas. 2.

2. *Of appeal.*—*Where not justified.*—One part of a decree was held to be sufficiently doubtful to justify an appeal against it; but as to another part of the same decree, the appellant having sought to obtain a construction of articles of agreement, which he knew not to be justified by circumstances, the appeal, being dismissed, was dismissed with costs. *Wilson v. Wilson*, 5 H. of L. Cas. 41.

## CREDITORS.

*Trust for.*—*A. and B., father and son*, executed in 1818 an indenture of settlement, on occasion of the son's intended marriage. The father and son, the lady and her father, and other persons, trustees, were parties to the indenture. Certain freehold estates were conveyed to the trustees for *A.* for life, remainder to *B.*, and these estates were exonerated from debts due by *A.*, which debts were made charges on certain leasehold premises expressly named. These premises were vested in trustees, on trust (among other things) to keep down the interest of *A.*'s debts affecting any of the estates comprised in the deed, and they were empowered "with the desire and consent" of *A.* and *B.*, notwithstanding any of the trusts therein contained, to sell the leasehold premises so put in settlement for the payment of the debts and incumbrances. Another deed was executed by *A.* and *B.* in 1824, which rectified the former, appointed new trustees, added new

debts, and made provision for the payment of all. The trustees never acted in discharge of the trust, and the deeds were not communicated to the creditors, but *B.*, who by an arrangement with his father had possession and management of the estates, paid the interest on the debts. After the death of both *A.* and *B.*, the son of the latter entered into possession of the estates. *C.*, a bond creditor, whose name and claim were set forth in the schedule to the deed of 1818, filed a bill to have the trusts of that deed carried into execution. The Court of Chancery in Ireland *held*, that this debt "was within the trust contained in the indenture for the payment of the scheduled debts."

On appeal, this decision was confirmed, Lord St. Leonard *dissentiente*. *Synnot v. Simpson*, 5 H. of L. Cas. 121.

Cases cited in the judgment: *Garrard v. Lord Lauderdale*, 3 Sim. 1; 2 Russ. & M. 451; *Walwyn v. Coutts*, 3 Sim. 14; 3 Mer. 707; *Ervans v. Bagwell*, 4 Dru. & W. 398; 2 Conn. & L. 612; *Gibbs v. Glamis*, 11 Sim. 584; *Gibbs v. Gibbon*, 11 Sim. 591; 5 Jur. 378; *Simmonds v. Palles*, 2 J. & L. 489; *Worrall v. Harford*, 8 Ves. 4; *Browne v. Cavendish*, 1 J. & L. 606; *Latouche v. Lord Lucan*, 7 C. & F. 772.

#### DEED OF SEPARATION.

See *Husband and Wife*.

#### FRAUD.

See *Corporation*.

#### HUSBAND AND WIFE.

*Deed of separation*.—*Specific performance of agreement*.—*Withdrawing suit for nullity in Ecclesiastical Court*.—A suit for nullity of marriage had been instituted by the wife against her husband; an arrangement for a deed of separation was proposed, in order to stop it. An agreement was entered into by which the property of the parties was regulated, and by which their conduct in relation to each other would be guided. One of the articles of this agreement stipulated that the husband should "permit the wife to live separate and apart from him, as if she was unmarried, without any molestation, interference, or annoyance whatsoever, by, or on the part of, the husband." By another article, it was declared that if he performed the covenants, &c., "he, his heirs, executors, &c., and their estates and effects, shall be indemnified from all the present debts and liabilities of the said John" (the husband), "by the joint and several covenant of" the trustees for the wife. A deed was to be drawn up in conformity with these articles, and on mutual execution of the deed the suit for nullity was to be withdrawn. On a bill by the wife to compel the husband specifically to perform this agreement the Vice-Chancellor made an order referring it to the Master to approve of a proper deed to carry its provisions into effect. This order was confirmed on appeal to this House. Pending the appeal, the Master approved of a deed containing a covenant by the husband not to institute any suit in the Ecclesiastical Court for restitution of conjugal rights, and another in which

the trustees of the wife agreed to indemnify the husband "against the present and future debts of Mary," the wife. Exceptions to this deed, taken by the husband, were overruled by the Vice-Chancellor, whose decision was affirmed by the Lord Chancellor.

*Held*, that, after a previous judgment of this House affirming the order which referred the agreement to the Master as the basis for a deed of separation between these parties, the subsequent order approving of the deed as drawn by the Master must be supported.

But *quære*, whether as a rule of equity the Court could enforce by injunction a stipulation to live separate, or not to bring a suit for restitution of conjugal rights, though undoubtedly it could enforce stipulations as to an arrangement of property, and as to forbearance from personal molestation?

*Held*, also, that the Court was fully at liberty to examine the articles of agreement, and on finding in them a stipulation as to payment of debts, inconsistent with the rest of the articles and insensible or absurd, to authorise the introduction into the deed of a covenant which would carry into effect the real intentions of the parties. *Wilson v. Wilson*, 5 H. of L. Cas. 40.

#### INTEREST OF JUDGE.

See *Railway Company*, 1.

#### LEGATEE.

See *Will*, 2.

#### LIMITATIONS, STATUTE OF.

See *Will*, 3.

#### PARTIES.

See *Charity*.

#### QUANTUM MERUIT.

See *Contract*.

#### RAILWAY COMPANY.

1. *And contractor*.—*Interest of arbitrator*.—A contract between a railway company and a building contractor, stipulated that payments should from time to time, during the progress of the works, be made by the company to the contractor, such payments to be made on certificates granted by the "principal engineer of the company or his assistant resident engineer." In case of dispute between the contractor and the assistant resident engineer, the decision of "the principal engineer of the company" was to be final; but at the completion of the works, if the contractor and the principal engineer differed, the differences between them were to be settled by arbitration. After differences had so arisen between the contractor and the company, it was discovered by the former that the principal engineer was a shareholder in the company. On a bill to have accounts taken, one of the grounds for which was this fact, then first discovered,

*Held*, that (no fraudulent concealment being alleged) it formed no ground for relief; for that by contract the contractor had bound himself to submit to the judgment of a particular individual, whose position as principal engineer made him interested for the company. The case of *Dimes v. The Grand Junction Canal*

*Company*, 3 H. of L. Cas. 759, held not to apply. *Ranger v. Great Western Railway Company*, 5 H. of L. Cas. 72.

2. *Contract*.—*Power to enter on and complete works*.—*Equity*.—In a contract with a railway company for the execution of certain works, there was a clause empowering the company, after notice, to take possession of the plant and to finish the works: the company acted on this clause.

Held, that this did not furnish ground for a bill in equity as putting an end to the contract, though it might be the subject of an action for damages. *Ranger v. Great Western Railway Company*, 5 H. of L. Cas. 72.

#### "RESIDUE."

See *Will*, 1.

#### SPECIFIC PERFORMANCE.

See *Husband and Wife*.

#### "SURPLUS."

See *Will*, 1.

#### TRUST FOR CREDITORS.

See *Creditors*.

#### UNLIQUIDATED DAMAGES.

Or penalties, on non-completion of contract within time specified.—A contractor undertook to do certain works within a given term, or to pay certain fixed sums; whether these were penalties or unliquidated damages, was not necessarily the subject of a bill in equity, but might properly have been decided in an action at law. The fact that a bond with a penalty had been given to secure payment of them, was itself strong evidence to show that they were liquidated damages. *Ranger v. Great Western Railway Company*, 5 H. of L. Cas. 73.

Cases cited in the judgment: *Astley v. Weldon*, 2 Bro. & P. 346; *Kemble v. Farran*, 6 Bing. 141.

#### WILL.

1. *Construction*.—"Surplus."—"Residue."—It is a question to be determined by the particular words of each will, whether a gift of "surplus" or "residue" means surplus or residue properly so called, or a mere proportional share of a particular fund. Where after the gift of a fund charged with certain payments, the words were "and the overplus which the said, &c., do produce more than all these disbursements do amount to (which I do find and compute to be about 60l. per annum)," they were held to mean surplus, and not proportional share. *Mayor, &c., of Southmolton v. Attorney-General*, 5 H. of L. Cas. 1.

Cases cited in the judgment; *Thetford School Case*, 8 Co. Rep. 130; *Duke's Ch. Us.* 71; *Attorney-General v. Arnold*, Show, P. C. 22; *Attorney-General v. Johnson*, Amb. 190; *Attorney-General v. Smythies*, 2 Russ. & M. 717; *Attorney-General v. Brasenose College*, 2 Clark & F. 295; *Attorney-General v. Corporation of Bristol*, 2 Jac. & W. 294; *Attorney-General v. Drapers' Company*, 4 Beav. 67.

2. *Mistake in name of legatee*.—A testatrix, who, without professional assistance, made her own will, named Robert John M. (the eldest son of her brother) her executor. She then

created two annuities of 50l. each, in favour of two persons, and made a gift to a third, but in terms which left it doubtful whether the gift was of that specific sum, or of an annuity to that amount; she then proceeded thus:—"My dear nephew, John Henry M., of H., surgeon, but late of Calcott Hall, the above bequests to fall into his hands, and should he not marry, to be divided equally between Samuel M., John M., and Mary D." (formerly Mary Margaret M., but then a married woman), "all of them late of Calcott Hall, must each receive 50l., the residue to fall into my above-named executor's hands." There was a son, Thomas, born between Samuel and Mary, but there was no son named only John; the second nephew, John Henry, died unmarried; the others survived him.

Held, affirming a decision of the Master of the Rolls, and of Lord Justice Turner (Lord Justice Knight Bruce having dissented), that Thomas was not entitled to any share of the residue. *Mostyn v. Mostyn*, 5 H. of L. Cas. 155.

Cases cited in the judgment: *Pitotime v. Brace*, Finch, 408; *Dowset v. Sweet*, Amb. 175; *Parsons v. Parsons*, 1 Ves. J. 266; *Cameys v. Blundell*, 1 H. of L. Cas. 778; *Dent v. Popsy*, 6 Madd. 350; *Hiscocks v. Hiscocks*, 5 M. & W. 363; *Beaumont v. Fell*, 2 P. Wms. 141; *Miller v. Travers*, 8 Bing. 244; 1 Moo. & Sc. 342; *Doe dem. Gorda v. Needs*, 2 M. & W. 129.

3. *Debts of other persons*.—*Statute of Limitations*.—A., who had a life interest in certain estates, gave a bond to a creditor, and a warrant of attorney to confess judgment for its amount. No judgment was entered up. A. died within three years of the date of the bond, leaving no assets real or personal. B., his son, the first tenant in tail of the estates, entered into possession, and expressed in letters to the creditor a wish to pay his father's debts, but would not give any security for them. B. made a will, in which reciting his own wish and a promise in conformity with it, made by him to his father and mother, he said,—“And in case I should not be able to fulfil my intentions during my lifetime, and that I should not have a sufficient fund for that purpose arising from my personal estate, I hereby charge all my just debts, and also all the debts of my late father, A., which shall remain unpaid at the time of my decease, upon all my real estates wheresoever,” &c. He then directed his trustees to stand seised of all his real estates, “subject in manner aforesaid to the payment of all my just debts and to the debts of my father.” B. survived his father many years. The obligee of the bond filed a charge thereof against the trustee under the son's will.

Held, that the debts of the father, which were not barred by the Statute of Limitations at the death of the father, were charges on the real estates of the son. *O'Connor v. Haslam*, 5 H. of L. Cas. 170.

Cases cited in the judgment: *Scott v. Jones*, 4 C. & F. 382; *Burke v. Jones*, 2 V. & B. 276.

# The Legal Observer,

AND

## SOLICITORS' JOURNAL

—“Still attorneyed at your service.”—*Shakespeare.*

SATURDAY, OCTOBER 27, 1855.

### REVIEW OF PROFESSIONAL MEASURES DURING THE LAST HALF-YEAR.

To our readers, who are generally engaged in the affairs of their clients, and rarely attend to their own professional interests, it may be useful at the close of the present Volume, to notice the subjects bearing on the practitioners of the Law, which have been mooted before the Legislature or elsewhere, in the course of the last six months. We trust that well-nigh all the important measures of Law Reform have been sufficiently stated and discussed in these pages, or have formed the subjects of leading articles, observations, or correspondence.

We may in the first place advert to the several proposed improvements in the jurisdiction, practice, and course of proceeding in the *Court of Chancery*, particularly at the Judges' Chambers, the consolidation of the business of the Report Office with that of the Record and Writs, the Administration of Oaths by Solicitors, the Fees of Office and other matters.<sup>1</sup>

Amongst the special topics of consideration, has been the project (a second time brought forward) for altering the Law relating to *Trustees and Executors*, and enabling a *Joint-Stock Company* to become executors and trustees in family and private affairs, and to derive profits from the execution of trusts and executorships, contrary to the rules of Equity, unless specially provided by the will or settlement. On this important subject, we may refer to pp. 3,

77, 94, where the objections to the Bill are fully stated.

The proposed abolition of the testamentary jurisdiction of the *Ecclesiastical Courts*, and its transfer to the Court of Chancery or to a new Court of Probate, have often been under consideration.<sup>2</sup>

The rival *Bills of Exchange* Bills have also been repeatedly noticed:—the one originating with Lord Brougham in the House of Lords, in imitation of the Scottish system of “summary diligence;”—the other introduced by Mr. Keating in the House of Commons, for facilitating the remedies on dishonoured bills and preventing frivolous and fictitious defences:—the latter of which at length received the Royal Assent.<sup>3</sup>

The alteration in the Law of Partnership and Joint-Stock Companies by *limiting the liability* of partners, has engaged much of our attention, as will appear by the observations at pp. 193, 254, 273. The result of the Act as finally passed, and its defects have been pointed out at p. 353.

The new Statutes of the Session have been printed verbatim in our columns as soon as passed, and have been followed as early as practicable with notes and comments, explaining their effect. A List of the Acts will be found at p. 495.

The several other Bills introduced either into the House of Lords or Commons during the Session, but which were negatived or withdrawn, have been set forth fully or briefly according to their degree of importance. Amongst these we may refer to the Leases and Sales of Settled Estates

<sup>1</sup> On these topics we refer to pages 4, 55, 94, 154, 255, 373.

VOL. I. No. 1,442.

<sup>2</sup> Pages 1, 29, 41, 54, 93.

<sup>3</sup> See pages 2, 57, 213, 393.

(see pp. 42, 47);—the Estates of Intestates;—the Judgment and Execution Bill;—the Public Prosecutors' Bill;—the Assizes and Sessions Bill:—whereon observations will be found at pp. 313—316.

Passing from the proceedings in Parliament, we may next advert to the several Reports of Commissioners and Parliamentary Committees which have been made during the last six months, all of which have been forthwith laid before our readers; namely, the Reports on

County Courts, pp. 21, 45, 59, 73, 115, 246.

Bills of Exchange, p. 57.

Statute Law Consolidation, 78, 229, 261, 301, 387.

Public Peace, 230.

Mercantile Law, 364, 382, 420.

The important subject of the *Remuneration of Solicitors* has been discussed in numerous articles, containing various suggestions, not only for the improvement of the present rules of taxation and the increase of the fees comprised in the fixed scale of allowance; but to several proposed new Rules and Principles of Taxation, such as the allowance of a per centage or an *ad valorem* rate of charge, proportionate to the amount of skill and labour bestowed and the responsibility incurred.<sup>4</sup>

The urgent proposals for extending the *Education and Examination* of persons applying to be Admitted on the Rolls of Attorneys and Solicitors, have occupied a considerable share of attention; and we have been enabled to give due publicity to the Examiners' Questions and the rules and regulations to be observed by the Candidates, with accurate information of the results of the Examination.<sup>5</sup>

The proposed *Removal of the Courts* from Palace Yard and their erection and enlargement in the vicinity of the Inns of Court, including the location of all the offices of Law and Equity under one roof, was repeatedly advocated in former years, and the discussion has been recently revived, and the wretched state of the present Courts, their ill-construction and deficient number, have been constantly brought under notice. See pp. 26, 71, 269, 304.

The recent decisions on the *Law of Attorneys* and Solicitors, have been recorded in almost every Number throughout the Volume; the cases determined on the Law

of *Costs* have also been particularly noticed; and the constructions put by the Courts on the several recent Statutes have been carefully stated. The new Rules and Orders, and the decisions on points of practice have also been promptly given.

The proposal to close the Courts and offices, and the chambers of Attorneys at two o'clock on Saturdays, has on several occasions been brought to the notice of the Profession.<sup>6</sup>

The proceedings of the several Law Societies have been fully reported; namely—

The Incorporated Law Society, pp. 114, 133, 202, 223, 286, 308, 483.

The Metropolitan and Provincial Law Association, pp. 14, 87, 106, 390, 487.

The Juridical Society, 230, 244.

The Law Life Assurance Society, 163.

The Law Association for the Benefit of Widows, 248.

The Attorneys' Benevolent Institution, 473.

And the United Law Clerks' Society, pp. 147, 180.

The *Inns of Court* and *Chancery*, and the relation they bear on the status, position, and interests of the Attorneys and Solicitors, have been urged on the attention of the Profession, and the advantages considered by the adoption of measures for associating the Inns of Chancery with the Incorporated Law Society in proper measures for the education and improvement of the second branch of the Profession. See pp. 433, 486.

The progress of the numerous Law Bills in Parliament, in any way affecting the Profession, have week by week been noted; and the returns to Parliament of all professional information have been promptly given.

Such new and important works on the Law and Practice of the Courts as appeared necessary to bring under the notice of our readers, have been reviewed as early as practicable.

The Professional Lists which have been from time to time published, comprise the Admissions of Attorneys; the Renewal of Certificates; the Dissolution of Professional Partnerships; Law Appointments, Promotions, &c.

Under the general head of "Notes of the Week," we have recorded various passing events with occasional remarks thereon, and to these have been added the usual announcements of the Circuits of the Judges, the Sittings of the Courts, and such other

<sup>4</sup> See pages 2, 27, 55, 113, 133, 153, 200, 233, 281, 333, 478.

<sup>5</sup> See particularly pages 8, 63, 71, 103, 141, 149, 425.

<sup>6</sup> See pages 70, 86, 109, 209, 327.

legal intelligence as appeared useful to the practitioners in general. We have thus, we trust, fulfilled our duty in supplying the earliest information in our power on all matters of professional interest, especially to the larger branch of the Profession.

## THE BILLS OF EXCHANGE ACT.

THIS Act came into operation on the 25th instant; but in the form of the Writ given in the Schedule, and the Indorsements to be made thereon, it has been suggested that there appears to be an omission in one of the indorsements, for though it is provided that where final judgment is signed after the expiration of 12 days from the service, the costs shall be added, there is no express provision for the costs of the writ where the defendant pays the amount of the bill within days.

In a useful Edition of the Act by Mr. O. B. C. Harrison,<sup>1</sup> the Editor intimates, that probably the omission cannot be supplied by the plaintiff; and that the defect should be remedied next Session.

We have received some suggestions on the subject of the costs under the new Act, the items of which are to be fixed by the Masters and approved by the Judges; but it will be premature to consider those items, until the first important question has been decided by the Judges,—whether the preliminary costs of the writ can be recovered.

The number of days within which the tender of the amount due on the bill and interest, with the expenses of noting, is left blank in the schedule. Whether it should be filled up with the usual time of four days or extended to twelve when the judgment may be signed, does not appear.

These doubts, which have been raised by some of the practitioners in the Common Law Courts, appears to be answered by the provision in the 7th section of the new Act, whereby the Common Law Procedure Acts of 1852 and 1854, and the Rules made thereunder, are incorporated into this Act.

By the 8th section of the Common Law Procedure Act (15 & 16 Vict. c. 76), it is enacted, that—

“Upon the writ and copy of any writ served for the payment of any debt the amount of the debt shall be stated, and the amount of what the plaintiff's attorney claims for the costs of such writ copy and service, and attendance to receive

debt and costs; and it shall be further stated that upon payment thereof within four days to the plaintiff or his attorney, further proceedings will be stayed; which indorsement shall be written or printed in the following form or to the like effect:—

“The plaintiff claims £            for debt, and £            for costs, and if the amount thereof be paid to the plaintiff or to his attorney within four days from the service hereof, further proceedings will be stayed.”

“But the defendant shall be at liberty, notwithstanding such payment, to have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation.”

By this provision the doubt seems to be removed, and in issuing writs under the new Act, one of the indorsements thereon should include the words “together with costs to be taxed,” until the amount be fixed, and when fixed, such amount should be stated in the writ.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

THE Acts relating to the Law of the present Session, printed in the *Legal Observer*, with an Analysis to each, will be found at the following pages:—

- Purchasers' Protection, 18 Vict. c. 15,—p. 5.
- Lunacy Regulation Act, c. 13,—p. 32.
- Commons' Inclosure, c. 14,—p. 32.
- Newspaper Stamp Duties, c. 27,—p. 137.
- Sewers (House Drainage), c. 30,—p. 139.
- House of Commons' Proceedings, c. 33,—p. 139.
- Income Tax, c. 20,—p. 197.
- Stannary Courts' Jurisdiction, c. 32,—pp. 214, 236.
- Administration of Oaths Abroad, 18 & 19 Vict. c. 42,—p. 175.
- Ecclesiastical Courts (Defamation Suits Abolition), c. 41,—p. 176.
- Common Law Pleadings, c. 26,—p. 176.
- Infants' Marriage Settlements, c. 33,—p. 198.
- Palatine of Lancaster Trials, c. 45,—p. 241.
- Bills of Exchange and Promissory Notes, c. 67,—p. 256.
- Cinque Ports, c. 48,—p. 258.
- Commons Inclosure (No. 2), c. 61,—p. 275.
- Incumbered Estates Acts (Ireland) Continuance, c. 73,—p. 276.
- Places of Religious Worship Registration, c. 81,—p. 276.
- Friendly Societies, c. 63,—pp. 296, 319, 342.
- Limited Liability, c. 133,—p. 316.
- Despatch of Business, Court of Chancery, c. 134,—p. 338.
- Charitable Trusts, 1855, c. 124,—p. 358.
- Crown Suits, c. 90,—p. 376.
- Criminal Justice, c. 126,—p. 377.
- Merchant Shipping Amendment Act, c. 91,—p. 395.

<sup>1</sup> Published by Wildy and Son. There are other doubts to be considered on the practical working of the Act, particularly as to proceedings against several parties to a bill.



Bills of Lading, c. 111,—p. 398.  
 Youthful Offenders, c. 97,—p. 399.  
 Metropolitan Buildings' Act, 1855, c. 122,—  
 pp. 415, 436.  
 Metropolis Local Management Act, c. 120,  
 —p. 456.  
 Nuisances Removal, c. 121,—p. 496.

#### NUISANCES REMOVAL.

18 & 19 VICT. c. 121.

THE preamble to this Act states that the provisions of "The Nuisances Removal and Diseases Prevention Act, 1848," amended by "The Nuisances Removal and Diseases Prevention Amendment Act, 1849," are defective, and that it is expedient to repeal the said Acts as far as relates to England, and to substitute other provisions more effectual in that behalf: it is therefore enacted that the recited Acts shall be repealed as far as relates to England, except as to proceedings commenced; s. 1.

The principal enactments are as follow:—

##### 1. Constitution and Powers of Local Authorities.

The following bodies shall respectively be the local authority to execute this Act in the districts hereunder stated in England:

In any place within which the Public Health Act is or shall be in force, the Local Board of Health:

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the city of London and the liberties thereof, where the local authority shall be the Commissioners of Sewers for the time being; and except in the city of Oxford and borough of Cambridge, where the local authority shall be the Commissioners acting in execution of the Local Improvement Acts in force respectively in the said city and borough:

In any place in which there is no Local Board of Health or council, and where there are or shall be trustees or Commissioners under an Improvement Act, such trustees or Commissioners:

In any place within which there is no such Local Board of Health, nor council, body of trustees, or Commissioners, and where there is or shall be a board for the repair of the highways of such place, that board:

In any place where there is no such Local Board of Health, council, body of trustees, or Commissioners, nor highway board, a committee for carrying this Act into execution, by the name of "The Nuisances Removal Committee," of which the surveyor or surveyors of highways for the time being of such place shall be *ex officio* a member or members, may be annually chosen by the vestry on the same day as the overseers or surveyors of highways, and the first of such Committees may be chosen at a vestry to be specially held for that purpose; and such Com-

mittee may consist of such number of members as the vestry shall determine, not being more than 12, exclusive of such surveyor or surveyors, and of such Committee three shall be a quorum:

In any place wherein there is no such Local Board of Health, council, body of trustees, or Commissioners, highway board, or committee appointed as aforesaid, and wherein there is or shall be a board of inspectors for lighting and watching under the Act 3 & 4 Wm. 4, c. 90, that board with the surveyor of highways:

In any place in which there is no such Local Board of Health, council, body of trustees, or Commissioners, nor highway board, nor committee appointed as aforesaid, nor board of inspectors for lighting and watching, the guardians and overseers of the poor and the surveyors of the highways in and for such place; s. 3.

In extra-parochial places not comprised within the jurisdiction of any of the local authorities aforesaid, and having a population of not less than 200 persons, the local authority for the execution of this Act shall be a nuisances' removal committee, elected annually by the householders within the extra-parochial place:

The first election of such committee shall take place at a meeting of such householders summoned for that purpose by the churchwardens of the adjacent place having the largest common boundary with such extra-parochial place; and Subsequent elections shall be held annually on some day in Easter week at meetings summoned by the chairman of the local authority for the year preceding:

Extra-parochial places not so comprised as aforesaid, and having a population of less than 200 persons, shall for the purpose of this Act be attached to and form part of the adjacent place having the largest common boundary with the extra-parochial place, and notice of vestry meetings for the election of a local authority under and for the purposes of this Act shall be given in such extra-parochial places, and the householders within such places may attend such vestry meetings, and vote on such elections; s. 6.

All charges and expenses incurred by the local authority in executing this Act, and not recovered, as by this Act provided, may be defrayed as follows; to wit,

Out of general district rates, where the local authority is a Local Board of Health;

Out of the borough fund or borough rate, where the local authority is the mayor, aldermen, and burgesses by the council, or if there be an Improvement Act for the borough administered by the council, then out of rates levied thereunder applicable to the purposes of such Improvement Act; or in the city of London and the liberties thereof, any rates or funds administered by the Commissioners of Sewers for the said city and liberties;

**Provided** always, that in the city of Oxford and borough of Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable;

**Out** of the rates levied for purposes of improvement under any Improvement Act, where the local authority is a body of trustees or Commissioners acting in execution of the powers of such an Act;

**Out** of highway rates, or any fund applicable in aid or in lieu thereof, where the local authority is a highway board, or a nuisances removal committee;

**Out** of the rates for lighting and watching, where the local authority is a board of inspectors appointed for lighting and watching;

**And** if there be no such rates or funds, or if the local authority be the guardians and surveyors of highways, then out of the rates or funds applicable to the relief of the poor of the parish or place wherein such rates or funds are collected or arise, if such parish or place be co-extensive with the district within which the charges and expenses are incurred, but if such parish or place be now or hereafter shall be partly comprised within and partly without the limits of a place where a local authority, other than a highway board, nuisances removal committee, inspectors of watching and lighting, and surveyors or guardians and surveyors, exists or shall exist, all the charges and expenses incurred in the district comprising that part of the parish or place which is excluded from such limits shall be defrayed out of any highway rate or rates, or any funds applicable in lieu thereof, collected or raised within the part so excluded; and if there be more than one highway rate collected within such district, the local authority shall settle the proportion in which the respective parties or places liable thereto shall bear such charges and expenses; and if any portion of such excluded part be exempt from such highway rate or rates, then all the charges and expenses incurred in the whole of such excluded part shall be defrayed out of any district police rate or other rate which may by the Act 12 & 13 Vict. c. 65, be raised and assessed upon such excluded part:

**And** when the local authority has no control of such rates or funds, the officer or person having the custody or control thereof shall pay over the amount to the local authority, on the order of two justices, directed to such officer or person; and on neglect or refusal to pay the sum specified in such order for six days after the service thereof, the same may, by warrant under the hands of the same or any two justices, be levied by distress and sale of the goods and chattels of the officer or person in default, and such levy shall in-

clude the costs of such distress and sale: In extra-parochial places having a population of not less than 200 persons, out of a rate assessed by the local authority on all such property in the place as would be assessable to highway rate if such rate were levied therein:

In extra-parochial places having a population of less than 200 persons, out of a similar rate assessed by the surveyor of highways of the adjacent place having the largest common boundary with such extra-parochial place:

**And** the local authority in the first case, and the surveyor of highways in the second, may levy and collect the sums so assessed, in the same manner, and with the same remedies in case of any default in payment thereof, and with the same right of appeal against the amount of such assessment reserved to the person assessed, as are provided by the law in force for the time being with regard to rates for the repair of highways; s. 7.

The word "Nuisances" under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health:

Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul as to be a nuisance or injurious to health:

Any animal so kept as to be a nuisance or injurious to health:

Any accumulation or deposit which is a nuisance or injurious to health:

**Provided** always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section, when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby; s. 8.

**Power** to local authority to appoint a sanitary inspector, and allow him a proper salary; s. 9.

**Notice** of nuisances to be given to local authority, &c., to ground proceedings; s. 10.

The local authority shall have power of entry for the following purposes of this Act, and under the following conditions:—

1. To ground proceedings.

For this purpose, when they or any of their officers have reasonable grounds for believing that a nuisance exists on any private premises, demand may be made by them or their officer, on any person having custody of the premises, for admission to inspect the same at any hour between nine in the morning and six in the evening; and if admission be not granted, any justice having jurisdiction in the place may, on oath made before him of belief in the existence of the nuisance, and after reasonable notice of the intended application to such justice being given in writing to the party on whose premises the nuisance is believed to exist, by

order under his hand require the person having the custody of the premises to admit the local authority or their officer; and if no person having custody of the premises can be discovered, any such justice may and shall, on oath made before him of belief in the existence of such nuisance, and of the fact that no person having custody of the premises can be discovered, by order under his hand authorise the local authority or their officers to enter the premises between the hours aforesaid.

2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act.

For these purposes, whenever, under the provisions of this Act, a nuisance has been ascertained to exist, or when an order of abatement or prohibition under this Act has been made, or when it becomes necessary to ascertain the course of a drain, the local authority may enter on the premises, by themselves or their officers, between the hours aforesaid, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done shall have been completed, as the case may be.

3. To remove or abate a nuisance in case of non-compliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers and for the purposes of this Act.

For this purpose the local authority or their officer may from time to time enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is found, at all reasonable hours, or at all hours during which business is carried on such premises, without notice; s. 11.

## 2. Removal of Nuisances.

In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance in their opinion did exist at the time when the notice was given, and although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace; and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or if such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists, or did exist at the time when the notice was given, or, if removed or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in

writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance; s. 12.

By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect, or purify the premises which are a nuisance or injurious to health, or such part thereof as the justices may direct in their order, or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited.

Penalty for contravention of order of abatement; and of prohibition. Local authority may enter and remove or abate nuisance; s. 14.

Any such order of prohibition may be appealed against as provided in this Act; s. 15.

When it shall appear to the justices that the execution of structural works is required for the abatement of a nuisance, they may direct such works to be carried out under the direction or with the consent or approval of any public board, trustees, or Commissioners having jurisdiction in the place in respect of such works; and if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided in this Act, and shall have entered into recognizances to try such appeal as provided by this Act, and shall appeal accordingly, no

liability to penalty shall arise, nor shall any work be done nor proceedings taken under such order, until after the determination of such appeal, unless such appeal cease to be prosecuted; s. 16.

Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises, is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the cost defrayed out of the rates or funds applicable to the execution of this Act; s. 17.

Any matter or thing removed by the local authority in pursuance of this enactment may be sold by public auction, after not less than five days' notice by posting bills distributed in the locality, unless in cases where the delay would be prejudicial to health, when the justices may direct the immediate removal, destruction, or sale of the matter or thing; and the money arising from the sale retained by the local authority, and applied in payment of all expenses incurred under this Act with reference to such nuisance, and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing; s. 18.

All reasonable costs and expenses from time to time incurred in making a complaint, or giving notice or in obtaining an order of justices under this Act, or in carrying the same into effect under this Act, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order be made on the local authority, or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises; and such costs and expenses and penalties, together with the charges of suing for the same, may be recovered in any County or Superior Court, or, if the local authority think fit, before any two justices of the peace; and the said justices shall have power to divide such costs, expenses, and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable; and if it appear to them that a complaint made under this Act is frivolous or unfounded, they may order the payment by the local authority or person making the complaint of the costs incurred by the person against whom the complaint is made, or any part thereof; s. 19.

Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, any justice of the peace, upon the appli-

cation of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices at a time and place to be named therein; and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within 14 days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale; s. 20.

Surveyors of highways to cleanse ditches, &c., paying owners, &c., for damages; s. 21.

Power to local authority to cover and improve open ditches, &c.; s. 22.

Penalty for causing water to be corrupted by gas washings; s. 23.

Penalty to be sued for in Superior Courts within six months; s. 24.

Daily penalty during the continuance of the offence; s. 25.

Penalty on sale of unwholesome meat, &c.; s. 26.

If any candle house, melting house, melting place, or soaphouse, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning, or for crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia, be at any time certified to the local authority by any medical officer, or any two legally qualified medical practitioners, to be a nuisance or injurious to the health of the inhabitants of the neighbourhood, the local authority shall direct complaint to be made before any justice, who may summon before any two justices in petty sessions assembled at their usual place of meeting the person by or in whose behalf the work so complained of is carried on, and such justices shall inquire into such complaint, and if it shall appear to such justice that the trade or business carried on by the person complained against is a nuisance, or causes any effluvia injurious to the health of the inhabitants of the neighbourhood, and that such person shall not have used the best practical means for abating such nuisance or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises or being a foreman or other person employed by such owner or occupier,) shall, upon a summary conviction for such offence, forfeit and pay a sum of not more than 5*l.* nor less than 40*s.*, and upon a second conviction for such offence the sum of 10*l.* and for each subsequent conviction a sum double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of 200*l.*: Provided

always, that the justices may suspend their final determination in any such case, upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as the said justices shall judge to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or shall give notice of appeal in the manner provided by this Act, and shall enter into recognizances to try such appeal, and shall appeal accordingly: Provided always, that the provisions hereinbefore-contained shall not extend or be applicable to any place without the limits of any city, town, or populous district; s. 27.

Provided also, That if, upon his appearance before such justices, the party complained against object to have the matter determined by such justices, and enter into recognizances, with sufficient sureties, to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject-matter of complaint, the local authority shall thereupon abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity in her Majesty's Superior Courts for preventing or abating the nuisance complained of; s. 28.

On certificate of medical officer to local authority that the house is overcrowded, proceedings may be taken to abate the same; s. 29.

Local authority to order costs of prosecutions to be paid out of the rates; s. 30.

### 3. Procedure under the Act.

Notices, summonses, and orders under this Act may be served by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises they may also be served by delivering the same, or a true copy thereof, to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises, or if the person shall reside at a distance of more than five miles from the office of the inspector then by a registered letter through the post; s. 31.

Copies of any orders or resolutions of the local authority or their committee, purporting to be signed by the chairman of such body or committee, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same; s. 32.

Where proceedings under this Act are to be taken against several persons in respect of one nuisance caused by the joint act or default of such persons, it shall be lawful for the local authority to include such persons in one complaint, and for the justices to include such persons in one summons, and any order made in such a case may be made upon all or any number of the persons included in the summons, and the costs may be distributed as to the justices may appear fair and reasonable; s. 33.

In case of any demand or complaint under this Act to which two or more persons, being owners or occupiers of premises, or partly the one or partly the other, may be answerable jointly or in common or severally, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law; s. 34.

Whenever, in any proceeding under this Act, whether written or otherwise, it shall become necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description; s. 35.

Whoever refuses to obey an order of justices under this act for admission on premises of the local authority or their officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding 5l.; s. 36.

If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall by order in writing require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within 24 hours after the service of such order the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding 5l. for every day afterwards during the continuance of such non-compliance; s. 37.

Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England according to the provisions of the 11 & 12 Vict. c. 43, and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act; s. 38.

Proceedings not to be quashed for want of form; s. 39.

*Appeals* under this Act shall be to the Court of Quarter Sessions held next after the making of the order appealed against; but the appellant shall not be heard in support of the appeal unless within 14 days after the making of the order appealed against he give to the local authority notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal, and shall within two days of giving such notice enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said Court, and to abide the order of and pay such costs as shall be awarded by the justices at such Court or

any adjournment thereof; and the said Court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard; provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid; provided also, that in any case of appeal the Court of Quarter Sessions may, if they think fit, state the facts specially for the determination of her Majesty's Court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of certiorari or otherwise, into the said Court of Queen's Bench; s. 40.

Forms to be used as in Schedule; s. 41.

The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to Local Boards of Health and their officers by the law in force for the time being; s. 42.

Act not to impair jurisdiction of Sewers Commissioners, or Common Law remedies for nuisance, nor jurisdiction of local authority as to the nuisances referred to in this Act; s. 43.

Act not to affect navigation of rivers or canals; s. 44.

No power given by this Act shall be exercised in such manner as to injuriously affect the supply, quality, or fall of water contained in any reservoir or stream, or any feeders of such reservoir or stream, belonging to or supplying any waterwork established by Act of Parliament, or in cases where any company or individual are entitled for their own benefit to the use of such reservoir or stream, or to the supply of water contained in such feeders, without the consent in writing of the company or corporation in whom such waterworks may be vested, or of the parties so entitled to the use of such reservoirs, streams, and feeders, and also of the owners thereof in cases where the owners and parties so entitled are not the same person.

## NOTICES OF NEW BOOKS.

*The Friendly Societies' Manual: comprising the new Consolidation Act, 18 & 19 Vict. c. 63, and other Statutes affecting old and new Societies, as well as Industrial Societies, methodically arranged; with an exemplification of the Official System of*

*Bookkeeping, Rules, Tables of Contributions, Cases, Forms, &c., &c., &c.* By GEORGE C. OKE, Author of "The Magisterial Synopsis" and "Formulist," "Law of Turnpike Roads," &c., &c. London: Butterworths. 1855. Pp. 221.

MR. OKE, in the introduction to this work, gives an outline of the Acts repealed and an analysis of the new Act, which came into operation on the 1st August, 1855. It extends to great Britain and Ireland and to the Channel Isles and Isle of Man. The following are the provisions as described by the Author, which differ from the repealed Acts:—

"Places new and old societies, if the sums assured by them are within the prescribed limits, on the same footing as respects their engagements, privileges, and exemptions (ss. 2—5):

Abolishes all fees to the registrar on certifying rules, &c. (s. 26):

Extends the amount of assurances at death from 160*l.* to 200*l.* (s. 9):

Places no limit on the weekly allowance to be made in sickness:

Allows of a sum being assured to be paid on the birth of a child (s. 9):

Limits the amount to be assured on the death of a child under five years of age to 6*l.*, and between five and ten to 10*l.*; and requires the cause of death to be certified, as well as the entry of death from the registrar of deaths, before payment of the sum assured (s. 10):

Allows of relief, &c., being assured to nominees (ss. 9, 31):

Requires a separate contribution to be made by members to defray the expenses of management (s. 25):

Abolishes the distinction contained in the 13 & 14 Vict. c. 115, between certified and registered societies (s. 26):

Does not allow specifically the formation of emigration societies (s. 9):

Transfers the justices' jurisdiction to settle disputes between members and societies to the County Court (s. 40):

Allows of an extra contribution being required from militia men who are members, and serving out of the kingdom (s. 47):

Circulating false copies of the rules is made an offence punishable on summary conviction (s. 29):

Further facilities are given of investing the funds of friendly societies, and transferring stock, &c. (ss. 32, 33)."

Mr. Oke arranges the contents of the First Part of his Volume under the following heads:—

1. As to societies formed before 1st August, 1855.

2. As to new societies formed under the 18 & 19 Vict. c. 63.

3. As to assurance companies formerly within the Friendly Societies Acts.

4. Suggestions, model rules, and tables of contributions.

5. Exemplification of the official system of bookkeeping.

The Second Part of the Work comprises Industrial and Provident Societies :

1. For what purposes those societies may be formed.

2. The rules thereof.

3. The statutory provisions applicable to them.

4. Interest and liabilities of members.

5. Arbitration in case of dispute, &c.

Mr. Oke having had much experience in the practical working of the Statutes on this subject, has prepared this manual and added various valuable suggestions for establishing friendly societies. The work is well arranged, and the Act has been very carefully edited.

## LAW OF COSTS.

**"FULL COSTS" UNDER 17 CAR. 2, C. 7, IN ACTION OF REPLEVIN.—OF DISTRESS BEFORE PLAINT AND OF MAKING UP RECORD.**

THE defendants in an action of replevin, in which the avowry was for a rent-charge under a will, obtained a verdict, and their damages were assessed under the 21 Hen. 8, c. 19, s. 3. Upon the taxation the Master allowed them full costs *as between attorney and client* under the 17 Car. 2, c. 7, s. 3, and also their costs of the distress incurred before plaint and of making up the record. It appeared that the record was made up and the cause taken down for trial by each of the parties to the action.

On a rule *nisi* for the reviewal of the taxation, *Parke, B.*, said :—"I agree that the term 'full costs' merely means the ordinary costs as between party and party. The expression seems to have been introduced into the 17 Car. 2, c. 7, merely for the purpose of excluding the idea that the defendant was only to be entitled to recover a limited sum for costs, according to the provisions of certain Statutes which were in operation at that time.

"As to the costs of the record, I think it is but reasonable, although the plaintiff has taken down a record, that the defendants should be allowed the expense of their record.

"Then, as to costs incurred by making the distress. Under the 11 Geo. 2, c. 19, s. 22 (the Landlord and Tenant Act), successful defendants in replevin were entitled to double

costs of suit. So much of that Statute as gave a defendant double or treble costs is repealed by the 5 & 6 Vict. c. 97, which gives in lieu thereof a 'full and reasonable indemnity as to all costs, charges, and expenses incurred in and about the action, suit, or other legal proceeding, to be taxed by the proper officer.' This case, however, is under the 19 Car. 2, c. 7, which gives no power to indemnify for all charges. It may be that this is a *casus omisus*. The costs of making a distress are not costs in the suit either in the Superior or Inferior Court. Such costs do not appear to be provided for, and consequently they are not allowable." The rule was accordingly made absolute to review the taxation. *Jamieson v. Trevelyan and wife*, 10 Exch. R. 748.

## YORKSHIRE LAW SOCIETY.

**SPECIAL REPORT OF THE COMMITTEE ON THE EXCLUSION OF SOLICITORS FROM THE MAGISTRACY.**

10th October, 1855.

THE Committee beg to submit, for the consideration of the members of the Society, their Report, made in pursuance of the resolution of the General Meeting, held on the 17th July last, on the subject of the exclusion by the Lord Chancellor of solicitors from the magistracy in cities and boroughs.

The Rule of Law with respect to the Appointment of Solicitors to the Magistracy of England and Wales, will be found in the Statute 6 & 7 Vict. c. 73. By the 33rd section of this Act it is enacted, That no attorney or solicitor shall be capable to continue or be a justice of the peace for any county within that part of Great Britain called England, or the principality of Wales, during such time as he shall continue in the business of an attorney or solicitor. And by the 34th section, it is provided that the prohibition last thereinbefore contained, shall not extend to any city or town being a county of itself, or to any city or town having justices of the peace within their respective limits and precincts, by charter, commission, or otherwise; but that in every such city or town attorneys or solicitors may be capable of being justices of the peace.

The eligibility, therefore, of attorneys and solicitors to be appointed to the magistracy in cities and towns, is distinctly recognised by the Legislature, whilst they are excluded from the counties; but your committee have been unable to discover any reason why, if they be qualified in the one case, they should not be in the other.

The committee have lately directed circulars to be addressed to the town clerks of all the cities and boroughs in England and Wales, for the purpose of ascertaining the particulars relating to the magistracy in those places, which they were instructed by the resolution of the

General Meeting to obtain, and they have received the desired information from the greater part of them, which has been furnished with great readiness and courtesy. They regret, however, that from 35 places they have not received replies.

In the 148 cities and boroughs from which information has been received, the committee find the following result:—

At the time of the passing of the Municipal Corporation Act, 5 & 6 Wm. 4, c. 76, and in the five years immediately preceding, 74 practising solicitors were mayors, or chief officers of cities or boroughs, all of whom, or very nearly so, were justices of the peace by virtue of their office.

Since the passing of that Act, not less than 277 practising solicitors have filled the office of mayor, and consequently, in pursuance of the 57th section of the Act, have been justices of the peace during the time of their holding such office, and the next succeeding year. Of these gentlemen, 43 have held the appointment twice; 13 three times; 5 four times; 2 five times; and 1 six times.

At the passing of the Municipal Corporation Act, and in the five years immediately preceding, 48 practising solicitors were justices of the peace, exclusive of mayors.

Since the passing of that Act, 47 practising solicitors have been placed in the commission of the peace, and during the same period, in many places, including York, Lancaster, Hartlepool, Sudbury, Portsmouth, Congleton, Oswestry, Marlborough, and Bodmin, practising solicitors have been recommended by the town councils for the appointment, but have, notwithstanding such recommendation, been excluded by the Lord Chancellor, whilst, in other places, such as Norwich and Lincoln, practising solicitors would have been selected, but the Chancellor's rule to exclude them was known and acted upon.

The committee have every reason to believe that when the requisite information shall be obtained from the remaining cities and boroughs, it will present a proportionate result.

It cannot fail to be observed that the above facts are of a most satisfactory character; they indicate a large amount of respect for, and confidence placed in members of the Profession by their neighbours and fellow citizens to an extent by many wholly unexpected, and to the entire Profession most flattering.

The committee are not aware that out of the great number of solicitors who have been placed in the magistracy, any one has been found unfit, either through improper conduct, or incapacity, for his honourable position.

Under these circumstances, it is difficult to understand what just ground there can be for the rule adopted by the Lord Chancellor to exclude the entire Profession from the office of magistrate in cities and boroughs, for which he certainly has not any legislative sanction.

It may, however, be conceded that an attorney appointed to the office of magistrate, ought not, either directly or indirectly, to practise in

any general or petty sessions' business arising within the jurisdiction for which he is appointed, and it is well known that many solicitors of respectability undertake very little, if any business of that description, and would very readily relinquish it altogether.

The committee, therefore, think that the Profession ought to seek for a legislative enactment, rendering the members of it generally eligible for the office of magistrate, not only in cities and boroughs, but also in counties,—accompanied by an express prohibition against their acting professionally in general or petty sessions' business in the districts for which they act as magistrates. This course would meet every objection that could be justly made, on public grounds, to the appointment of solicitors, and would make the rule of law, with respect to them, very similar to what is now the case in Scotland.

In Scotland, advocates, writers to the signet, and solicitors in the Supreme Courts (who do not practise before justices of the peace), may be appointed provosts and magistrates, and are frequently so appointed; and as such are justices of the peace by virtue of their offices, they may also be appointed, individually justices of the peace, and are so appointed frequently; the only general disqualification is introduced in the Small Debts Act, 6 Geo. 4, c. 48, s. 27, by which it is declared that no solicitor or procurator in any *Inferior* Court in Scotland, shall act as justice of the peace in any county in Scotland, during such time as such solicitor or procurator shall practise as such in any *Inferior* Court. The disqualification extends, therefore, only to practitioners in the inferior Courts.

With respect to Ireland, the Committee find that there is no disqualification of solicitors to act as magistrates in counties similar to that contained in the 6 & 7 Vict. c. 73. In several instances they have been appointed mayors or chief officers of cities and boroughs, and in such capacity have acted as magistrates. It has, however, been the practice to exclude them from commissions of the peace, although there is no legislative sanction whatever for such exclusion.

It is well known that in appointing the magistrates for the cities and boroughs of England and Wales, the Lord Chancellor so far pays a deference to public opinion, as to call upon town councils to recommend the proper parties to be inserted in the commission of the peace, yet in the case of solicitors, he treats such recommendation with disregard; and your committee cannot conclude their report without expressing the belief that this exclusion arises more from a jealousy, on the part of official persons, of the influence of solicitors, than from considerations of the public good, and the same feeling has been evinced in the exclusion of their Profession, from Bankruptcy and Lunacy Commissionerships, County Court Judgeships, &c., which offices many of its members are as competent to fill as the parties who have been appointed.



# INDEX TO THE PUBLIC GENERAL ACTS

RELATING TO THE LAW.  
18 & 19 VICT.

*Actions*; to facilitate the Remedies on Bills of Exchange and Promissory Notes by the Prevention of frivolous or fictitious Defences to Actions thereon; cap. 67.

*Administration of Oaths Abroad*; to enable British Diplomatic and Consular Agents Abroad to administer Oaths and do Notarial Acts; cap. 42.

*Affirmations*; to allow Affirmations to be made instead of Oaths in certain Cases; cap. 25. *Scotland*.

*Alterations in Pleadings*; to continue 13 & 14 Vict., c. 16, for enabling the Judges of the Courts of Common Law at Westminster to alter the Forms of Pleading; c. 26.

*Beer*; to repeal 17 & 18 Vict. c. 79 for further regulating the Sale of Beer and other Liquors on the Lord's Day, and to substitute other provisions in lieu thereof; c. 118.

*Benefices (Contiguous)*, to make better Provisions for the Union of; c. 127.

*Bills of Exchange*; to facilitate the Remedies on, by the Prevention of frivolous or fictitious Defences to Actions thereon; c. 67.

*Bills of Lading*; to amend the Law relating to; c. 111.

*Births*; to make further provision for the Registration of; c. 29. *Scotland*.

*Board of Health*; to confirm Provisional Orders of the General Board of Health, applying the Public Health Act (1848); c. 125.

*Burial of the Dead*; to amend the Laws concerning; c. 68. *Scotland*.

*Burial of the Dead*; further to amend the Laws concerning; c. 128.

*Burial of Poor Persons* by Guardians and Overseers of the Poor, to amend the Law regarding; c. 79.

*Chancery* (Court of), to make further Provision for the more speedy Despatch of Business in, and to vest in the Lord Chancellor the Ground and Buildings of the said Court situate in Southampton Buildings, Chancery Lane, with Powers of Leasing and Sale thereof; c. 134.

*Charitable Trusts* Act, 1853, to amend; c. 124.

*Cinque Ports*, for the better Administration of Justice in; c. 48.

*Coal Mines*, to amend the Laws for the Inspection of; c. 108.

*Common Law Courts* at Westminster, to continue 13 & 14 Vict. c. 16, for enabling the Judges of, to alter the Forms of Pleading; c. 26.

*Common Law Procedure* Act, 1854, to extend to Ireland the Provisions of the 18th section of; c. 7.

*Commons Inclosure*; to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales; c. 14.

*Copyhold and Inclosure Commissions*; to continue Appointments under the Act for consolidating; c. 52.

*Costs*, for the Payment of, in Proceedings instituted on behalf of the Crown in Matters relating to the Revenue; c. 90.

*County Elections*, to amend 2 & 3 Wm. 4, c. 65, so far as relates to the Procedure in; c. 24. *Scotland*.

*Criminal Justice*, for diminishing Expenses and Delay in the Administration of, in certain Cases; c. 126.

*Crown Debts*, for the better Protection of Purchasers against; c. 15.

*Crown Suits*, for the Payment of Costs in, in Matters relating to the Revenue, and for the Amendment of the Procedure and Practice in Crown Suits in the Court of Exchequer; c. 90.

*Defamation*, for abolishing the Jurisdiction of the Ecclesiastical Courts of England and Wales in Suits for; c. 41.

*Drainage*; to empower the Commissioners of Sewers to expend on House Drainage a certain Sum out of the Moneys borrowed by them on the Security of the Rates; c. 30.

*Ecclesiastical Courts*, for abolishing the Jurisdiction of, in suits for Defamation; c. 41.

*Ecclesiastical Jurisdiction*, to continue certain temporary Provisions concerning; c. 75.

*Friendly Societies*, to consolidate and amend the Law relating to; c. 63.

*Inclosure of Lands*; to authorise the Inclosure of certain Lands in pursuance of a Report of the Inclosure Commissioners for England and Wales; cc. 14, 61.

*Income*; for granting to her Majesty an increased Rate of Duty on Profits arising from Property, Professions, Trades, and Offices; c. 20.

*Incumbered Estates*, to extend the period for applying for a Sale under the Acts for facilitating the Sale and Transfer of; c. 73. *Ireland*.

*Indemnity*; annual Act to indemnify such Persons as have omitted to qualify themselves for Offices and Employments, and to extend the Time for those purposes respectively; c. 49.

*India*, to amend certain Acts relating to the Supreme Courts of Judicature in; c. 93.

*Infants* enabled, with the Approbation of the Court of Chancery, to make binding Settlements of their Real and Personal Estate, on Marriage; c. 43.

*Insurance on Lives*; to continue 16 & 17 Vict. c. 91, for extending for a limited time the Provision for Abatement of Income Tax in respect of; c. 35.

*Intestacy*; to alter in certain respects the Law of Intestate Moveable Succession; c. 25. *Scotland*.

*Joint-Stock Companies*, for limiting the Liability of Members of certain; c. 133.

*Judgments*, for the better Protection of Purchasers against; c. 15.

*Jurisdiction* of the Stannary Court, to amend and extend; c. 32.

*Jurisdiction of Ecclesiastical Courts in Suits for Defamation, for abolishing; c. 41.*

*Jurisdiction (Ecclesiastical) to continue certain temporary Provisions concerning; c. 75.*

*Justice, for the better Administration of, in the Cinque Ports; c. 48.*

*Lancaster (County Palatine of) for further assimilating the Practice in, to that of other Counties with respect to the Trial of Issues from the Superior Courts at Westminster; c. 45.*

*Limited Liability of Members of certain Joint-Stock Companies; c. 135.*

*Lis Pendens, for the better Protection of Purchasers against cases of; c. 15.*

*London, for the better Local Management of; c. 120.*

*Lunacy Regulation Act, 1853, to explain and amend; c. 13.*

*Lunatic Asylums (Public) Act, 1853, to amend, and also the Acts passed in the 9 and 17 Vict., for the Regulation of the Care of Lunatics; c. 105.*

*Marriages, to make further Provision for the Registration of; c. 29. Scotland.*

*Marriages, to render valid certain Marriages in Christ Church in the Chapelry of Todmorden and Parish of Rochdale in the Counties of Lancaster and York; c. 66.*

*Merchant Shipping Act, 1854 to amend; c. 91.*

*Metropolis, for the better Local Management of; c. 120.*

*Metropolis, to amend the Laws relating to the Construction of Buildings in the Metropolis and its neighbourhood; c. 122.*

*Newspapers, to amend the Laws relating to the Stamp Duties on; c. 27.*

*Nuisances Removal and Diseases and Prevention Acts, 1848 and 1849, to consolidate; c. 121.*

*Oaths, to allow Affirmations or Declarations to be made instead of, in certain cases; c. 25. Scotland.*

*Oaths; to enable British Diplomatic and Consular Agents abroad to administer Oaths; c. 42.*

*Passengers, to amend the Law relating to the Carriage of, by Sea; c. 119.*

*Pleading, to continue 13 & 14 Vict. c. 16, for enabling the Judges of the Courts of Common Law at Westminster to alter the Forms of; c. 26.*

*Poor; to continue 17 & 18 Vict. c. 43, for charging the Maintenance of certain poor Persons in Unions upon the Common Fund; c. 47.*

*Poor; to continue the Exemption of Inhabitants from liability to be rated as such, in respect of Stock in Trade or other Property, to the Relief of the Poor; c. 51.*

*Poor; to amend the Law regarding the Burial of poor Persons by Guardians and Overseers of; c. 79.*

*Prince of Wales Island; to amend certain Acts relating to the Court of Judicature of Prince of Wales Island, Singapore, and Malacca; c. 93.*

*Promissory Notes, to facilitate the Remedies on, by the Prevention of frivolous or fictitious Defences to Actions thereon; c. 67.*

*Property and Professions, for granting to her Majesty an increased Rate of Duty on Profits arising from; c. 20.*

*Public Health Act, 1854, to continue and amend; c. 115.*

*Publications, to provide for the Transmission of, by Post; c. 27.*

*Purchasers Protection against Judgments; for the better Protection of Purchasers against Judgments, Crown Debts, Cases of Lis pendens, and Life Annuities or Rent-charges; c. 15.*

*Registration of Births, Deaths, and Marriages, to make further Provision for; c. 29. Scotland.*

*Religious Worship; to amend the Law concerning the certifying and registering of Places of Religious Worship; c. 31.*

*Religious Worship; for securing the Liberty of Religious Worship; c. 86.*

*Rentcharges, for the better Protection of Purchasers against; c. 15.*

*Sewers (House Drainage); Commissioners of Sewers empowered to expend on House Drainage a certain Sum out of the Moneys borrowed by them on the Security of the Rates, and also to give to the said Commissioners certain other Powers for the same purpose; c. 30.*

*Stamp Duties, to amend the Laws relating to; c. 78.*

*Stamp Duties on Newspapers, to amend the Laws relating to; c. 27.*

*Stannary Court, to amend and extend the Jurisdiction of; c. 32.*

*Stock in Trade; to continue the Exemption of Inhabitants from Liability to be rated as such, in respect of Stock in Trade or other Property to the Relief of the Poor; c. 51.*

*Turnpike Trusts, to confirm certain Provisional Orders made under 14 & 15 Vict. c. 38, to facilitate arrangements for the Relief of; c. 102.*

*Union Charges Act Continuance; to continue 17 & 18 Vict. c. 43 for charging the Maintenance of certain poor Persons in Unions in England and Wales upon the Common Fund; c. 47.*

*Union of Contiguous Benefices, to make better provision for; c. 127.*

*Weights and Measures, for legalising and preserving the restored Standards of; c. 72.*

*West Indies Relief Loan Arrangement; to authorise the Commissioners of the Treasury to make Arrangements concerning certain Loans advanced by way of Relief to the Islands of Antigua, Nevis, and Montserrat; c. 71.*

*Youthful Offenders; to amend 17 & 18 Vict. c. 86 for the better Care and Reformation of, and the Act 17 & 18 Vict. c. 74, to render Reformatory and Industrial Schools more available for the Benefit of Vagrant Children; c. 87. Scotland.*

## METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

### MEETING AT BIRMINGHAM.

THE annual provincial meeting of the members of this Association was held in Birmingham on Monday and Tuesday last, Oct. 22 and 23. The meetings took place in the Lecture Theatre, in Cannon Street. The first meeting was held on Monday afternoon, under the presidency of T. H. Bower, Esq., of London, Chairman of the Committee. The attendance included Messrs. A. Ryland, C. M. Ingleby, J. Rawlins, T. R. T. Hodgson, H. Hawks, W. S. Allen, W. Morgan, J. Powell, jun., and L. P. Rowley, of Birmingham; J. H. Shaw, John Bulmer, and E. Eddison, of Leeds; M. D. Lowndes, Thomas Arison, Chas. Falcon, and E. Banner, of Liverpool; J. Jones and W. Allen, of Worcester; Thos. Browett and Wm. Evans, of Coventry; A. Barnes and Geo. Birch, of Lichfield; L. J. Banks, of Tettenhall; W. Keary, of Stoke-upon-Trent; Thos. Nicks, of Warwick; E. Ball, of Pershore; R. Stevenson, of Hanley; S. Fletcher, R. Radford, John Sudlow, W. H. Partington, and James Brist, of Manchester; R. Leonard, jun., of Bristol; F. Baker, of Derby; J. H. Parkinson, of Horncastle; T. B. Thompson, of Tadcaster; Thos. Hodgson of York; J. Summerscales, of Oldham; E. Benham, E. K. Greville, W. S. Cookson, E. F. Burton, and W. Shaen, of London.

The proceedings were commenced by Mr. Shaen, the Secretary, reading the circular convening the meeting; after which

The Chairman announced that letters accounting for non-attendance had been received from a number of gentlemen, among whom was Mr. E. W. Field, of London, who was prevented attending by a journey to Scotland, and the meeting would therefore be deprived of the paper promised by that gentleman.

On the motion of Mr. Street, seconded by Mr. Banner, of Liverpool, it was agreed that the next provincial meeting of the Society should take place at Manchester, in October, 1856.

Mr. Cookson then read a paper "On the means of Elevating and Improving the Profession, and increasing its usefulness." The Profession of an Attorney and Solicitor, he remarked, was necessary to the public, and existed for the public benefit. It was a Profession of great antiquity, and from an early period in the History of England it had been recognised as one of our indispensable institutions. On the attorney in a great degree depended, not only the establishment of right, and the successful resistance of wrong, but the maintenance of harmony and good feeling between friends and neighbours, and the peace and happiness of families. Under these circumstances, he asked why it was that the public held towards the Profession as a body the language of disparagement and distrust? Why, even in an enlightened assembly like the House

of Commons, was the tone towards the Profession at large so unsatisfactory? Why were Messrs. Dodson and Fogg, or Messrs. Quirk, Gammon, and Snap, looked upon as fair specimens of the whole? It was probable that many circumstances had combined to produce this result. The attorney who was steadily, conscientiously, and successfully labouring in the discharge of his onerous and important duties, winning and inviting the confidence of his clients and the respect of his brethren, might pass through the whole of his professional life without ever appearing before the public, except occasionally as the solicitor for the sale of an estate. The public knew nothing of him. But if an attorney had been guilty of any misconduct, his delinquencies did not fail to come before the public. They were reported in the public prints, and, being commented on with just severity, the public mind was thereby led to contemplate the attorney in his most unfavourable aspect. Another cause of the unpopularity of the Profession was, the supposed opposition to legal reforms. This, he contended, was unfounded, and unjust when applied to the Profession at large, as no body of men had proved itself more zealous or disinterested in advocating and pressing amendments in the law. Its struggles for reforms in the practice of the Court of Chancery, in the Courts of Common Law, and in the Laws affecting Transfer of Property, had been constant and untiring, as the records of the various Law Societies abundantly testified. As a means of raising the character of the Profession, and increasing its usefulness, the writer noticed the efforts of the Law Societies, which had already conferred great advantages. Prior to the establishment of the Incorporated Law Society, there was no examination worthy of the name of applicants for admission on the roll of attorneys. Since its establishment, and by the exertions of the Profession, a system of examination had been introduced, by which the attainments of candidates for admission had been ascertained. The examination embraced five different branches of the law, viz., Common Law, Equity and Conveyancing, Bankrupt Law, and Criminal Law. That in the Common Law was conducted by one of the Masters of the Common Law Courts, and the others by members of the Profession, annually appointed by the Judges. The beneficial effects of these examinations were enlarged upon at some length, and the importance of fixing a higher standard of general education was strongly insisted upon as the best means of raising the character of the Profession, and removing the unfavourable impression that at present prevailed.

The second paper, "On the different Branches of the Profession," was read by Mr. John Bulmer, of Leeds.

Mr. W. Shaen read a paper "On the Organisation of the Profession—as it ought to be and as it is."

A discussion then took place upon the three foregoing papers.

—“Defects in the Law of Debtor and Creditor practically considered, in order to their Legislative Amendment,” was the title of the paper read by Mr. *Lowndes* of Liverpool.

The reading of the paper gave rise to considerable discussion, most of the speakers being of opinion that the present Act was capable of great improvement; that the fees ought to be greatly reduced, the present high commission paid to official assignees keeping most of the large estates out of Court, the winding up of the same being effected by private arrangement. \* At the suggestion of several gentlemen, Mr. *Lowndes* promised to produce the draft of a memorial to the Lord Chancellor on Tuesday morning.

The meeting then adjourned.

The members of the Association re-assembled on Tuesday morning, at 10 o'clock.

Mr. *Lowndes* read the memorial which he had prepared for presentation to the Lord Chancellor, on the subject of the Bankrupt Law, and moved that the memorial be referred to the committee of the Metropolitan and Provincial Law Association, with power to modify the same and submit it to the Lord Chancellor.

The proposition was seconded by Mr. *Shaw*, and carried.

Mr. *Arthur Ryland* read a paper entitled “Some Suggestions connected with the Consolidation of the Statutes.”

The reading of this paper was followed by considerable discussion, in which Mr. *Shaen*, Mr. *Ingleby*, Mr. *Lowndes*, the *Chairman*, Mr. *Benham*, and other gentlemen, took part, and Mr. *Ryland* was requested to prepare a form of petition embodying his own views, and to present the same to the general committee for their approval, in order that the same might be presented to Parliament.

Mr. *W. Morgan* read a paper “On the recent alteration of the Law in the Treatment of Juvenile Criminals.” This was followed by some discussion, in the course of which it was suggested that juvenile criminals should be sent to reformatories at a distance, in order to sever the connexion that might exist between them and their former associates in vice.

A paper “On Conditions of Sale,” by Mr. *R. Caparn*, was read by Mr. *Shaen*, the Secretary. In the discussion that ensued the practice was deprecated by the members present, and it was suggested that solicitors should print the conditions of sale some days previous to the auction, in order to allow the solicitors of intending purchasers time for their perusal, as it was impossible to do so at the time of sale, if only one copy was produced, which was frequently the case, and was consequently productive of great injustice.

A paper containing “Suggestions as to Amendments of the Law,” was read by Mr. *Shaen*.

Mr. *Shaw* then moved that the papers which had been read should be printed and circulated among the members of the Association. He remarked that the papers which had been

read did not emanate from the Association as a body, nor was the Society responsible for the principles which they enunciated. They were the production of individual members, who wished to direct the attention of the other members of the Society to the subjects on which they treated. No member of the Association was personally pledged to the adoption of any one of the opinions expressed in those papers; they were the opinions of the writers, who conceived that they were of such importance as to deserve the consideration of the members.

The resolution was seconded by Mr. *Rawlins*, who considered it essential to the prosperity of the Association that the papers should be printed.

Mr. *Ingleby* supported the resolution. He considered that one of the greatest impediments to the progress of the Society in this locality had been the lack of information as to its principles and objects. He had no doubt that the circulation of the papers would cause a great increase of subscribers.

Thanks were afterwards voted to the Birmingham and Midland Institute for the use of the theatre for the Society's meeting, and to Mr. *Ryland* for his exertions.

The proceedings were terminated by a vote of thanks to the Chairman.

[We hope to give the papers above referred to in an early Number.—ED.]

## EXAMINATION FOR THE BAR.

*Michaelmas Term, 1855.*

THE Council of Legal Education have approved of the following Rules for the Public Examination of the Students.

The attention of the Students is requested to the following Rules of the Inns of Court:—

“As an inducement to Students to propose themselves for examination, Studentships shall be founded of Fifty Guineas per annum each, to continue for a period of three years, and one such Studentship shall be conferred on the most distinguished Student at each Public Examination; and further, the Examiners shall select and certify the names of three other Students who shall have passed the next best Examinations; and the Inns of Court to which such Students belong, may, if desired, dispense with any Terms, not exceeding two, that may remain to be kept by such Students previously to their being called to the Bar. Provided that the Examiners shall not be obliged to confer or grant any Studentship or Certificate, unless they shall be of opinion that the Examination of the Students they select has been such as entitles them thereto.”

“At every call to the Bar those Students who have passed a Public Examination, and either obtained a Studentship or a Certificate of Honour, shall take rank in seniority over all other Students who shall be called on the same day.”

"No Student shall be eligible to be called to the Bar who shall not either have attended during one whole year the Lectures of two of the Readers, or have satisfactorily passed a Public Examination."

**Rules for the Public Examination of Candidates for Honours or Certificates, entitling Students to be called to the Bar.**

An Examination will be held in next Michaelmas Term, to which a Student of any of the Inns of Court, who is desirous of becoming a Candidate for a Studentship or Honours, or of obtaining a Certificate of Fitness for being called to the Bar will be admissible.

Each Student proposing to submit himself for Examination will be required to enter his name at the Treasurer's Office of the Inn of Court to which he belongs, on or before Tuesday, the 23rd day of October next, and he will further be required to state in writing whether his object in offering himself for Examination is to compete for a Studentship or other Honourable distinction; or whether he is merely desirous of obtaining a Certificate preliminary to a call to the Bar.

The Examination will commence on Tuesday, the 30th day of October next, and will be continued on the Wednesday and Thursday following.

It will take place in the Benchers' Reading Room of Lincoln's Inn; and the doors will be closed Ten Minutes after the time appointed for the commencement of the Examination.

The Examination by Printed Questions will be conducted in the following order:—

*Tuesday Morning, the 30th October, at half-past Nine, on Constitutional Law and Legal History; in the Afternoon, at half-past One, on Equity.*

*Wednesday Morning, the 31st October, at half-past Nine, on Common Law; in the Afternoon, at half-past One, on the Law of Real Property, &c.*

*Thursday Morning, the 1st November, at half-past Nine, on Jurisprudence and the Civil Law; in the Afternoon, at half-past One, a Paper will be given to the Students including Questions bearing upon all the foregoing Subjects of Examination.*

The Oral Examination will be conducted in the same Order, during the same Hours, and on the same subjects, as those already marked out for the Examination by Printed Questions, except that on *Thursday Afternoon* there will be no Oral Examination.

The Oral Examination of each Student will be conducted apart from the other Students; and the character of that Examination will vary according as the Student is a Candidate for Honours or a Studentship, or desires simply to obtain a Certificate.

The Oral Examination and Printed Questions will be founded on the Books below mentioned; regard being had, however, to the particular object with a view to which the Student presents himself for Examination.

In determining the question whether a Stu-

dent has passed the Examination in such a manner as to entitle him to be called to the Bar, the Examiners will principally have regard to the general knowledge of Law and Jurisprudence which he has displayed.

A Student may present himself at any number of Examinations, until he shall have obtained a Certificate.

Any Student who shall obtain a Certificate may present himself a second time for Examination as a Candidate for the Studentship, but only at one of the three Examinations immediately succeeding that at which he shall have obtained such Certificate; provided, that if any Student so presenting himself shall not succeed in obtaining the Studentship, his name shall not appear in the list.

Students who have kept more than Eleven Terms shall not be admitted to an Examination for the Studentship.

The READER ON CONSTITUTIONAL LAW and LEGAL HISTORY will expect the Candidates for Honours in the ensuing Examination to have mastered the first, second, fifth, sixth, seventh, and thirteenth chapters of Mr. Hallam's Constitutional History; the chapter in Foster's Crown Law relating to Treason; the chapter in Mr. Stephen's edition of Blackstone on the same subject, and the chapters in the same work relating to the Houses of Parliament and the Law concerning the Press; the chapters in Rapin on the Reign of James the First and Charles the First; May's History and the first volume of Clarendon's History of the Rebellion. He will expect them to be acquainted with the State Trials during the reigns of the Stuarts, of William the Third and Queen Anne.

He will expect the Candidates for a Pass to answer any general question bearing on English History, and to be well acquainted with the first, eighth, and thirteenth chapters in Hallam's Constitutional History, and with the chapters in Rapin containing the History of Charles the Second, and with the Trials of College, Lord Russell, and Algernon Sydney.

The READER ON EQUITY proposes to examine in the following Books and Subjects:—

1. *Smith's Manual of Equity Jurisprudence; Mitford on the Pleadings in the Court of Chancery.* Introduction:—Chapter 1, sec. 1 and 2; chapter 2, sec. 2, part 1 (the first three pages); chapter 2, sec. 2, part 2 (the first two pages); chapter 2, sec. 2, part 3; chapter 3. *The Act for the Improvement of the Jurisdiction of Equity*, 15 & 16 Vict. c. 86.

2. *The Cases and Notes contained in the first volume of White and Tudor's Leading Cases, particularly those relating to the subjects Election and Conversion. The remainder of chapter 2, sec. 2, part 2, in Mitford's Pleadings in the Court of Chancery.*

Candidates for Certificates of fitness to be called to the Bar will be expected to be well

acquainted with the Books mentioned in the first of the above Classes.

Candidates for the Studentship or Honours will be examined in the Books mentioned in the two Classes.

**THE READER ON THE LAW OF REAL PROPERTY** proposes to examine in the following Books and subjects:—

1. Williams, *Real Property*; Stephen, *Commentaries*, vol. 1; Sugden, *Powers*, vol. 1.
2. *The Power of Alienation possessed by Tenants in Tail and Married Women.*
3. *The extent of the Testamentary Power, and the alterations effected by the 1 Vict. c. 26.*
4. *The Protection afforded to Purchasers by means of Attendant Terms; and the Operation of the 8 & 9 Vict. c. 112.*
5. *The Law of Judgments, as it affects Real Property; Prideaux on Judgments* (4th edition); 18 Vict. c. 15.

Candidates for Honours will be examined in all the foregoing Books and Subjects. Candidates for a Certificate will be examined in those mentioned in parts 1, 2, and 3.

**THE READER ON JURISPRUDENCE** and the **CIVIL LAW** proposes to examine Candidates for Honours in the following Books and Subjects:—

1. The Elements of the Roman Law of Contract and Delict. Warnkönig, *Institutiones Juris Romani Privati*, Lib. iii.
2. The Fourth Book of the Commentaries of Gaius.
3. The First, Second, Third, and Fourth Lectures of Kent on International Law.

Candidates for a Pass Certificate will be examined in—

1. The Third and Fourth Books of the Institutes of Justinian, with the Notes contained in Sanders's Edition.
2. The First and Second Lectures of Kent on International Law.

**THE READER ON COMMON LAW** proposes to examine in the following subjects:—

Candidates for a Certificate will be examined in—

1. The Elements of the Law of Contracts (which may be read from Smith's Lectures on Contracts, 2nd ed., or from any recent Treatise on the subject).
2. Criminal Law as treated in Mr. Warren's Abridgment of Blackstone's Commentaries, pp. 573—656.
3. Candidates for a Certificate will also be expected to answer any question having reference to the Ordinary Proceedings in an Action at Law.

Candidates for the Studentship or Honours will be examined in the 1st and 3rd of the foregoing subjects, and also in—

4. The undermentioned cases from Coke's Reports:—

*Semayne's Case*, 5 Rep., 91 a.

*Cake's Case*, 8 Rep. 32 a., in connection with which should be read *Dansey v. Richardson*, 3 Ell. & Bl. 144.

*Beverly's Case*.—4 Rep. 123 b. (so far as it bears upon the capacity of one *non compos mentis* to contract), in connection with which should be read *Molton v. Camroux* 2 Exch. R. 487, S. C., 4 Exch. R. 17 *Beavan v. McDonnell*, 9 Exch. R. 309 and 10 Exch. R. 184.

*Pigot's Case*, 11 Rep. 26 b., in connection with which should be read *Davidson v. Cooper*, 11 M. & W. 778, S. C.; 13 M. & W. 343; *Master v. Miller*, 4 T. R. 320, S. C.; 2 H. Bl. 140; *Burchfield v. Moore*, 3 Ell. & Bl. 683; *Warrington v. Early*, 2 Ell. & Bl. 763.

5. The 5th, 6th, and 7th of Mr. Smith's Lectures on the Law of Landlord and Tenant (points relating to Continuance of Tenancy), with the notes thereto.

By Order of the Council,

RICHARD BETHELL, Chairman.  
Council Chamber, Lincoln's Inn,  
3rd August, 1855

## ANNUAL REGISTRATION OF ATTORNEYS AND SOLICITORS.

THE Forms of Declaration, under the 6 & 7 Vict. c. 73, may be had on application at the Office of the Incorporated Law Society, Chancery Lane.

The Members of the Profession are requested to be particular in filling them up, either by themselves, their partners, or their London Agents; and to send them to the office on as early a day as possible; and to attend to the following

### Regulations:

1. No Declaration can be acted upon which does not contain all the particulars required by the Act of Parliament.
2. Every Declaration must be delivered at the Office six days before a Certificate can be granted.
3. No Certificate will be delivered out till Tuesday, November 20.
4. In the first six days commencing on Nov. 20, Certificates will be delivered only to such London Agents as shall in due time previously have sent in the Declaration of themselves and their Country Clients, accompanied by a *List thereof arranged in alphabetical order, and written on foolscap paper bookwise.*
5. These six days to be appropriated among the London Agents, in the following order:—The Letters refer to the initial of the Agent's surname or that of the senior partner in the case of a Firm.

Those commencing with—

A, or B, . . . . .	Nov. 20
C, D, E, or F, . . . . .	21
G, H, I, or J, . . . . .	22
K, L, M, N, O, or P, . . . . .	23
Q, R, or S, . . . . .	24
T, U, V, W, X, Y, or Z . . . . .	26

6. On every day subsequent to November 26, the Certificates will be delivered to the rest of the Profession.

7. The Fee of 1s. 6d. fixed by the Act for issuing each Certificate is to be paid on taking the same away.

N. B.—You are requested not to fill in the Number at the top of the Declaration.

October, 1855.

### MICHAELMAS TERM EXAMINATION.

THE Examiners appointed for the examination of persons applying to be admitted Attorneys, have fixed *Tuesday*, the 13th Nov., at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination.

The Articles of Clerkship and Assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left on or before *Thursday*, the 8th Nov., at the office of the Law Society.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally; but the articles must be left within the first seven days of Term, and answers up to that time. If part of the Term has been served with a *Barrister*, *Special Pleader*, or *London Agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A Paper of Questions will be delivered to each Candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each Candidate is required to answer *all* the Preliminary Questions (No. 1); and also to answer in *three* of the other heads of inquiry, viz.:—*Common Law*, *Conveyancing*, and *Equity*.

The Examiners will continue the practice of proposing questions in *Bankruptcy* and in *Criminal Law* and *Proceedings before Justices of the Peace*, in order that Candidates who may have given their attention to these subjects, may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their general examination.

Under the New Rules of Hilary Term, 1853, it is provided that every person who shall have given notice of Examination and Admission, and “who shall not have attended to be examined, or not have passed the Examination, or not have been admitted, may *within one week after the end of the Term* for which such notices were given, *renew* the notices for Examination or Admission *for the then next ensuing Term*, and so from time to time as he shall think proper;” but shall not be admitted until the last day of the Term, unless otherwise ordered. This rule has been made in order to avoid the practice of giving double notices.

### SELECTIONS FROM CORRESPONDENCE.

#### LAW PARTNERSHIP.

A. and B. are partners as attorneys and solicitors. The partnership is dissolved. B. from time to time receives several large sums of money on account of the firm, but refuses either to pay them over or to render any account, although he undertook in writing to do so on the dissolution. Will a Court of Common Law entertain an application by A. to enforce a delivery of the account and the payment of the amount due to A., or refer the matter to the Master? A. M.

#### STATUTE OF LIMITATIONS.

A., a tradesman in London, sends goods to B., residing in the East Indies,—and upwards of six years elapse. Can the Statute in such case be pleaded in bar to the action?

B. contracts a debt in London and shortly afterwards goes to the United States and remains abroad until the expiration of six years when he returns. Is the creditor in such a case barred of his demand?

CIVIS A.

#### FINES ON COPYHOLDS LET ON BUILDING LEASES.

Considerable oppression having been experienced by reason of lords of manors exacting fines according to the *rack-rents* instead of the rents reserved by the building leases, which alone comprise the beneficial property of the copyholder,—the improved rent being that of the builder,—it is thought a legislative enactment might be passed to prevent such extortions in future. Numerous flagrant cases of the greatest injustice could be shown; in some the pretext was that the strict terms of the licence had not been complied with, the land having inadvertently been demised for three months beyond the term defined by the licence; in other cases inasmuch as the leases had been granted by the beneficial owner under the powers of a settlement, and not by the trustee who was the tenant on the roll.

The writer would feel obliged by the Profession communicating any facts of a similar character, confidentially. They may be addressed M. A., at Mr. *Maxwell's*, 32, Bell Yard, Lincoln's Inn. M. A.

### PROFESSIONAL LISTS.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 25th Sept., to 19th Oct., 1855, both inclusive, with dates when gazetted.

Gem, Roger Williams, William Docker, and Benjamin Heeley Sutton, Birmingham, Attorneys and Solicitors. Sept. 25.

Gilling, Thomas, and Henry Bernard, Wells, Attorneys and Solicitors. Oct. 12.

Higgins, Francis, and Charles Morton Rick-  
 etts Chamberlain, Ledbury, Attorneys and So-  
 licitors. Oct. 12.

Hindmarsh, James Illingworth, and Henry  
 Edward Hindmarsh, 7, Crescent, Jewin Street,  
 Cripplegate, Attorneys and Solicitors. Sept.  
 28.

Peed, John, and George Moore Smith, Whit-  
 cleay, Attorneys, Solicitors, and Conveyancers,  
 Oct. 16.

Pollard, George Octavius, and George Hol-  
 lings, Carlton Chambers, 12, Regent Street,  
 Attorneys and Solicitors. Oct. 12.

Smith, William, and Edward Argles, Big-  
 gleswade and Potton, Attorneys and Solicitors.  
 Sept. 25.

Woodward, William Wilton, Thomas Wood-  
 ward, and Edward Henry Pace, Pershore, At-  
 torneys and Solicitors (so far as regards the  
 said Thomas Woodward). Oct. 19.

PERPETUAL COMMISSIONER.

*Appointed under the Fines and Recoveries' Act,  
 with date when gasetted.*

Udall, Thomas, Newcastle-under-Lyne, in  
 and for the county of Stafford. Oct. 19.

NOTES OF THE WEEK.

FURTHER PROROGATION OF PARLIAMENT.

It is this day (Oct. 19) ordered by her Ma-  
 jesty in Council, that the Parliament which  
 stands prorogued to Tuesday the 23rd day of  
 October instant, be further prorogued to Tues-  
 day, the 11th day of December next.

WINTER CIRCUITS OF THE JUDGES.

In addition to the usual Winter Assizes for  
 the Counties of *York* and *Lancaster*, we are  
 informed that the Lord Chancellor will issue  
 Special Commissions for a general Assize and  
 gaol delivery in the several counties through-  
 out the respective Circuits where the return of  
 the number of prisoners for trial renders such  
 a course advisable.

The Assizes will be confined to a gaol de-  
 livery. No *Nisi Prius* business will be taken.  
 It is expected that the Assizes will be held in  
 the early part of December. The Commis-  
 sions will be issued as soon as the returns  
 have been made. The Circuit upon which each  
 of the Judges will proceed will then be selected.

LAW APPOINTMENTS AND PROMOTIONS.

In is understood that Mr. *Russell Gurney*  
 will be promoted to the office of Common Ser-  
 jeant of the City of London.

The Right Hon. *W. Keogh*, it is expected,  
 will take his seat on the Irish Bench during  
 the ensuing Michaelmas Term.

We are informed that Mr. *Bagshawe*, Q. C.,  
 intends to practise in the Rolls Court.

Mr. *Pressly* has been appointed Deputy  
 Chairman of the Board of Inland Revenue in  
 the room of Mr. Thornton, resigned.

Mr. *Henry Roberts* formerly Under-Secretary  
 for War, has been appointed a Commissioner of  
 Inland Revenue, in the room of Mr. Pressly.

Mr. *Chisholm Anstey* has been appointed  
 Attorney-General at Hong Kong.—*Observer.*

NAMES OF CASES

REPORTED IN VOLUME L.

	PAGE		PAGE
— in re, (M. R.) .. ..	232	Broughton v. White (L. C.) .. ..	230
— in re, (Q. B.) .. ..	131	Brown, in re Mary (V. C. W.) .. ..	130
— in re, (Q. B.) .. ..	131	Brunton's Trust, in re (V. C. W.) .. ..	212
Abington, Lord, v. Thornhill (V. C. W.) ..	232	Bullock v. Bennett (L. J.) .. ..	169
Alston v. Sims (V. C. K.) .. ..	37	Butcher v. London and South Western Rail- way Company (C. P.) .. ..	39
Attorney-General v. Hardy (V. C. S.) ..	292	Butler v. Meredith (Exch.) .. ..	40
— v. Robinson and others (Exch.) .. ..	92	Calvert v. Emmett (M. R.) .. ..	352
Barber, in re W. H. (Q. B.) .. ..	16	Chambers v. Wild (Q. B. F. C.) .. ..	16
Barrett v. White (V. C. K.) .. ..	191	Cheshunt College, ex parte Trustees of (V. C. W.) ..	312
Barrow v. Barrow (V. C. W.) .. ..	212	Clarke v. Arden (C. P.) .. ..	16
— v. Methold (V. C. W.) .. ..	512	Cochrane v. Phillips (V. C. S.) .. ..	111
— Lincolnshire, in re Churchwardens of (V. C. K.) .. ..	372	Cockburn v. Ankitt (V. C. K.) .. ..	432
Barwick v. Baba and another (C. P.) ..	192	Collins, in re John, a solicitor, &c. (L. J.) ..	330
Baynard v. Symons (Q. B.) .. ..	72	Courtier v. Cram (M. R.) .. ..	190
Bazalgette v. Lowe (L. J.) .. ..	71	Crook v. Crook (V. C. S.) .. ..	72
Benn v. Griffiths (V. C. W.) .. ..	332	Darwin v. Darwin (V. C. W...) .. ..	332
Bennett v. Powell (V. C. K.) .. ..	271	Desborough v. Harris and others (L. C.) ..	371
Bloy, in re (V. C. W.) .. ..	15	Dew v. Dew (V. C. K.) .. ..	210
Bothamley v. Squire (L. J.) .. ..	110		



	PAGE		PAGE
Dunn v. Bownas (V. C. W.) .. ..	191	Morris v. Coates (Q. B.) .. ..	131
Elliot v. Bishop (Exch.) .. ..	232	Morton v. Copeland (C. P.) .. ..	130
Elston v. Elston (V. C. W.) .. ..	72	National Land Company, ex parte Official	
Ely, ex parte Dean and Chapter of (V. C. K.)	211	Manager of, in re O'Connor (L. J.) ..	231
Evans v. De Castro (Exch.) .. ..	172	Nesbitt's Trusts, in re (V. C. K.) ..	331
— v. Robinson (Exch.) .. ..	40	Neve v. Avery (C. P.) .. ..	171
Fanshawe v. Walker (V. C. K.) .. ..	251	Newton, ex parte (C. P.) .. ..	40
Finch v. Hollingsworth (M. R.) .. ..	311	O'Connor, in re, ex parte Official Manager of	
Ford's Charity, in re (V. C. K.) .. ..	211	National Land Company (L. J.) ..	231
Franklyn, in re (L. C.) .. ..	210	Orchard, in re Wm. Henry (Q. B.) ..	131
Fry v. Noble (M. R.) .. ..	271	Parsons v. Alexander (Q. B.) .. ..	130
Gabb v. Prendergast (V. C. W.) .. ..	38	Pearse v. Harrison (V. C. K.) .. ..	472
George v. Somers (C. P.) .. ..	92, 112	Pennell v. Hume (V. C. K.) .. ..	210
Gerrard v. Butler (M. R.) .. ..	91	Queen v. Fuller (Q. B.) .. ..	92
Gibson v. Seagrim (M. R.) .. ..	170	— v. Handcock and others (L. C.) ..	110
Goddard v. Parr (V. C. K.) .. ..	272	— v. Hull, Governor of the Poor of	
Graves v. Humphreys (Q. B.) .. ..	16	(Q. B.) .. ..	151
Haakwood v. Lockerby (V. C. W.) .. ..	38	— v. Keith (Cr. Ca. Res.) .. ..	17
Haylock v. Rowbotham (V. C. K.) .. ..	232	— v. Rundle (Cr. Ca. Res.) .. ..	18
Haywood, in re, ex parte Walker (L. J.)	291	— v. Smith (Q. B.) .. ..	56
Henderson v. Australian Royal Mail Steam		— v. Smith (Cr. Ca. Res.) .. ..	112
Packet Company (Q. B.) .. ..	171	— v. Tibble (Q. B.) .. ..	38
Heaketh v. Fleming (Q. B. P. C.) .. ..	39	Quested v. Mitchell (V. C. K.) .. ..	37
Higgins v. Earl of Shaftesbury (M. R.)	352	Read v. Hoskins (Q. B.) .. ..	112
Hinchcliffe, in re (V. C. W.) .. ..	412	Rees v. Watts (Exch. Ch.) .. ..	512
Hodges v. Ankrum (Exch.) .. ..	192	Roberts v. Ball (V. C. S.) .. ..	91
Holden's Estate, in re (V. C. W.) .. ..	489	— v. Karalake (V. C. W.) .. ..	432
Hooper v. Cooke (M. R.) .. ..	432	Routledge, ex parte, in re Sutors' Fund (L. C.)	351
Hope v. Liddell (L. J.) .. ..	190	Ruck v. Barworth (V. C. K.) .. ..	211
Howard, in re (V. C. W.) .. ..	272	Rumsey, ex parte Robert Crook (M. R.)	250
James v. Harding (V. C. W.) .. ..	111	Score v. Oldfield (L. C.) .. ..	291
Johnson v. Diamond (Exch.) .. ..	17	Shaw v. Fisher (V. C. S.) .. ..	211
Jones v. Howell (V. C. W.) .. ..	372	— in re James (Insolv.) .. ..	56
— v. Jones (V. C. S.) .. ..	272	Silliburn v. Newport (V. C. W.) .. ..	392
— v. Orchard (C. P.) .. ..	152	Skidmore's Estate, in re (V. C. S.) ..	292
— Settled Estates, in re (V. C. S.)	170	Smith v. Lakeman (V. C. S.) .. ..	412
Kaye v. Smith (L. J.) .. ..	270	Sneashy v. Thorne and another (L. J.)	471
Kensington, Lord, v. Bouverie (L. J.)	90	Stahl v. Winter (M. R.) .. ..	452
Kiernan's Settlement, in re (V. C. K.)	352	Stanger v. Nelson (V. C. S.) .. ..	232
Laah v. Miller (L. C.) .. ..	53	Sutors' Fund, in re, ex parte Routledge (L. C.)	351
Lawrence v. Maule (V. C. K.) .. ..	151	Summer v. Strachan (V. C. S.) ..	251
Lee v. Church (V. C. W.) .. ..	452	Sweet and others v. Benning (C. P.) ..	152
Lillie v. Wilson (V. C. S.) .. ..	212	Tavernor, ex parte, in re London Dock Com-	
Littlejohns v. Household (M. R.) .. ..	170	pany (M. R.) .. ..	472
Lloyd v. Solicitors' and General Life Assurance		Tench v. Cheese (Ct. of Ch.) .. ..	411
Society (V. C. W.) .. ..	292	Tetley v. Swan (Exch.) .. ..	192
London Dock Company, in re, ex parte Taver-		Thistlethwaite's Trust, in re (L. J.) ..	1571
nor (M. R.) .. ..	472	Tindall, in re, ex parte Tindall (L. J.)	270
Macdonald v. Hollister (Exch.) .. ..	152	Todd, ex parte, in re Williamson (L. J.)	271
Manby v. Bewick (V. C. W.) .. ..	312	Tupper v. Tupper (V. C. W.) .. ..	392
March Charities, in re (V. C. K.) .. ..	291	Turner v. Turner (M. R.) .. ..	468
Marshall v. Jackson (Q. B.) .. ..	72	Twynan v. Hudson (L. J.) .. ..	231, 250
— ex parte, in re Marshall (L. J.)	151	Walker, ex parte, in re Haywood (L. J.)	291
— v. Scales (V. C. S.) .. ..	191	Warrington v. Leek (Exch.) .. ..	192
Matthews v. Livesley (Exch.) .. ..	132	Watson v. Loveday (V. C. W.) .. ..	15
May v. Hawkins (Exch.) .. ..	171	Wayne v. Lewis (V. C. K.) .. ..	432
Mellor, ex parte, in re Mellor (L. J.) ..	129	Wheatley v. Bastow (L. J.) .. ..	129
Mills v. Druitt (M. R.) .. ..	391	Wilkinson v. Sharland (Exch.) .. ..	17
Minet v. Leman (L. J.) .. ..	190	Wilks v. Plant (Exch.) .. ..	172
Morgan v. Fernibaugh (Exch.) .. ..	489	Williamson, in re, ex parte Todd (L. J.)	271
Morland v. Isaacs (M. R.) .. ..	37	Wintheringham's Trust, in re (V. C. W.)	252
Mornington v. Keene (V. C. W.) .. ..	56	Wright v. Lord Maidstone (V. C. W.)	392

**NOTED, CITED, AND DIGESTED IN VOLUME L.**

	PAGE		PAGE
ABLEY v. Dale, 11 C. B. 378 ..	92, 112	Catlin, in re, 18 Beav. 508 ..	326
Acaster v. Acaster, 19 Beav. 161 ..	85	Chomondeley v. Clinton, 19 Ves. 267 ..	207
Adamson, in re, 18 Beav. 460 ..	369	Christophers v. White, 10 Beav. 523 ..	231
Aitkin, ex parte, 4 B. & Ald. 47 ..	131	Clagett v. Phillips, 2 Y. & C., Ch., 82 ..	207
Aldrich v. Cooper, 8 Ves. 382 ..	170	Clark, in re, 13 Beav. 173 ..	323
Allen v. Bone, 4 Beav. 493 ..	243	Clarke v. Guardians of Cuckfield Union, 21 ..	
Alsop v. Lord Oxford, 1 Myl. & K. 564 ..	323	Law J., N. S., Q. B. 349 ..	171
Anon., 1 Lira. 266 ..	303	Collins v. Carey, 3 Beav. 128 ..	231
Anson v. Lee, 4 Sim. 364 ..	164	Combe v. Corporation of London, 1 Y. & C., ..	
Anstey v. Edwards, 16 C. B. 218 ..	308	Ch. 631 ..	204
Astley v. Weldon, 2 Bro. & P. 346 ..	492	Cooper v. Pegg, 16 C. B. 264 ..	349
Atkinson v. Abbott, 3 Drewry, 251 ..	243	Copeland, ex parte, 2 De G., M'N. & G. 914 ..	129
Attorney-General v. Arnold, Show. P. C. 22 ..	492	Copper Miners' Co. v. Fox, 16 Q. B. 229 ..	171
— v. Brazenose College, 2 C. & ..		Cornier v. Hake, 2 Cox, 173 ..	305
F. 293 ..	492	Cotton v. Soudamora, 1 Kay & J. 321 ..	180
— v. Bristol, Corporation of, 2 ..		Courtenay v. Stock, 1 Con. & Law. 366; 2 ..	
Jac. & W. 294 ..	492	Dru. & W. 251 ..	204
— v. Dublin, Corporation of, 1 ..		Coventry, in re Justices of, 19 Beav. 150 ..	84
Dru. & W. ..	266	Cox v. Cox, 1 Kay & J. 251 ..	125
— v. Johnson, Ambl. 190 ..	492	Craddock v. Piper, 1 M'N. & G. 664 ..	231
— v. Norwich, Corporation of, ..		Craig v. Watson, 8 Beav. 427 ..	205
2 M. & C. 424 ..	86	Crowthor v. Crowthor, 16 C. B. 177 ..	326
— v. Smythies, 2 Russ. & M. 717 ..			
— v. Drapers' Company, 4 ..	492	Dent v. Pepys, 6 Madd. 350 ..	492
Beav. 67 ..	492	Dimes v. Grand Junction Canal Company, 3 ..	
Averall v. Wade, Lloyd & G. 252 ..	170	H. of L. Cas. 759 ..	492
		Dixon v. Plant, 1 Doug. 200 n. ..	325
Bailey, ex parte, 23 Law J., N. S., Q. B. 353 ..	40	Doe dem. Gords v. Needs, 2 M. & W. 129 ..	492
Baldwin v. Belcher, 3 Dru. & W. 173 ..	170	Donaldson v. Haldan, 7 C. & F. 762 ..	205
Balsh v. Hyam, 2 P. Wms. 455 ..	86	Dowset v. Sweet, Ambl. 175 ..	492
Barber, in re W. H., 19 Beav. 378 ..	430	Drayson & another v. Andrews, 10 Exch. 472 ..	162
Bardon v. Keverber, 3 M. & W. 61 ..	84	Dufaur v. Sigel, 4 De G., M'N. & G. 520 ..	103
Barker, in re, 6 Sim. 476 ..	305	Dungey v. Angore, 2 Ves. J. 304 ..	120
Barnard v. Papineau, 3 De G. & S. 498 ..	224		
Barnes v. Raceter, 1 Y. & C., Ch. 401 ..	170	Erskine's Trust, in re, 1 Kay & J. 302 ..	126
Bartholomew's Will, in re, 13 Jur. 380 ..	261	Eton College, ex parte, 20 Law J., N. S., Ch. ..	
Barton v. Latour, 18 Beav. 526 ..	370	1; 15 Jur. 45 ..	331, 489
Beaumont, ex parte, 1 Doug. 200, n. ..	305	Evans v. Bagwell, 4 Dru. & W. 398; 2 Conn. ..	
Beaumont v. Fell, 2 P. Wms. 141 ..	492	& L. 613 ..	491
Becke, in re, 18 Beav. 462 ..	348	Esart v. Lister, 5 Beav. 585 ..	205
Billing v. Coppock, 1 Exch. 14; D. & L. 126; ..		Feltham's Trusts, in re, 1 Kay & J. 523 ..	221
16 Law J., N. S., Exch. 265 ..	305	Fenn v. Edmonds, 5 Hare, 514 ..	371
Binned v. Barefoot, 1 Dick. 119 ..	303	Finney v. Beasley, 17 Q. B. 86 ..	162
Bolton, in re, 9 Beav. 272 ..	205	Fisher v. Bridges, 3 Ellis & B. 666 ..	486
— v. Corporation of Liverpool, 3 Sim. ..		Flight v. Robinson, 8 Beav. 22 ..	206
467; 1 My. & K. 88 ..	206	Forbes and others v. Smith, 10 Exch. 717 ..	126
Boord, in re; Toghill v. Grant, 2 Beav. 261 ..	305	Forshaw v. Lewis, 10 Exch. 712 ..	268
Boughton v. Boughton, 1 H. of L. Cas. 406 ..	412	Foster v. Blakelock, 5 B. & C. 322; 8 D. & R. ..	
— v. Jewell, 15 Ves. 176 ..	180	48 ..	53
Brewer v. Jones, 10 Exch. 655 ..	53	Franks, ex parte, 7 Ring. 762 ..	24
Briggs v. Chamberlain, 18 Jur. 56 ..	488	Fraser v. Palmer, 4 Y. & C. 515 ..	231
Bristol, Marquis of, v. Robinson, 4 H. of L. ..		Freeman v. Fairlie, 8 Law J., N. S., Ch. 44 ..	205
Cas. 1088 ..	20	Fryer v. Sturt, 16 C. B. 218 ..	206
Brown v. Cavendish, 1 J. & L. 606 ..	491	Fyler v. Fyler, 3 Beav. 550 ..	204
Burdekin, ex parte, 2 Mont., Deac. & De G., ..			
704 ..	37	Garrard v. Lord Lauderdale, 3 Sim. 1; 2 Russ. ..	
Burke v. Jones, 2 V. & B. 275 ..	492	& M. 451 ..	491
Burrell v. Jones, 3 B. & Ald. 47 ..	53	Gedye, in re, 14 Law J., N. S., Q. B. 233; 2 ..	
		D. & L. 915 ..	206
Cannoy v. Blundell, 1 H. of L. Cas. 778 ..	492	Gibba v. Gibbin, 11 Sim. 591; 5 Jur. 373 ..	491
Canham v. Barry, 15 C. B. 597 ..	162	— v. Glambia, 11 Sim. 584 ..	491
Casdale v. Ball, 4 Q. B. 611 ..	305	Gibson v. May, 4 De G., M'N. & G. 512 ..	147
Carson, in re, 8 Beav. 436 ..	325	— v. Wealdard, 22 Law J., N. S., Ch. 66 ..	174
		Gillow v. Rider, 15 C. B. 729 ..	180

	PAGE		PAGE
Governesses' Benevolent Institution v. Rush- bridger, 18 Beav. 467 .. ..	369	May v. Bennett, 1 Russ. 370 .. ..	392
Graham v. Sime, 1 East, 632 .. ..	212	Maybery v. Mansfield, 9 Q. B. 754; 16 Law J., N. S., Q. B. 102 .. ..	53
Greedy v. Lavender, 11 Beav. 417 .. ..	86	Midland Counties Railway Company, in re, ex- parte Thoroton, Law J. (1848), Ch., 167 ..	332
Griffiths v. Griffiths, 2 Hare, 587 .. ..	390	Miller v. Traversa, 8 Bing. 244; 1 Moo. & S. 342 .. ..	492
Hammersey v. De Biel, 12 C. & F. 45; 3 Beav. 478 .. ..	20	Minter, in re, 19 Beav. 33 .. ..	84
Harnor v. Groves, 15 C. B. 667, 674 .. ..	162	Moore v. Frowd, 3 Myl. & Cr. 48 .. ..	231
Hart v. Frame, 6 C. & F. 193; MacL. & R. 595	205	Moostyn v. Moostyn, 5 H. of L. Cas. 155 ..	492
— v. White, Holt, N. P. 576 .. ..	53	Murray v. Parker, 19 Beav. 305 .. ..	406
Hartop, ex parte, 12 Ves. 349 .. ..	53	New v. Jones, 9 Byth. Convey. 338 .. ..	231
— v. Jukes, 3 M. & Sel. 438; 2 Rose, B. C. 263 .. ..	53	Newton v. Chambers, 1 Dowl. & L. 869 ..	53
Harvey v. Divers, 16 C. B. 497, 499 .. ..	443	Norman v. Mitchell, 19 Beav. 291 .. ..	390
— v. Mount, 8 Beav. 439 .. ..	204	North Western Railway Company v. Sharp, 10 Exch. 451 .. ..	223
Hawkins v. Gathercole, 1 Sim. N. S. 150 ..	208	O'Connor v. Haslam, 5 H. of L. Cas. 170 ..	492
Hesketh v. Fleming, 50 Leg. Obs. 39 .. ..	67	Osborn v. London Dock Company, 10 Exch. 698 .. ..	268
Heslop v. Metcalfe, 8 Sim. 623; 3 Myl. & C. 183 .. ..	390	Ostle v. Christian, 1 Turn. & R. 324 .. ..	305
Hiscocks v. Hiscocks, 5 M. & W. 363 .. ..	492	Owen v. Homan, 4 H. of L. Cas. 997 .. 18, 19, 20	
Holland, in re, 19 Beav. 314 .. ..	406	Paget v. Nicholson, 1 Dick. 285; Beam. Costs, app. No. 11 .. ..	305
Honiball v. Bloomer and others, 10 Exch. 538	103	Parker v. Rolls, 14 C. B. 691 .. ..	205
Hughes v. Biddulph, 4 Russ. 190 .. ..	206	Parsons v. Parsons, 1 Ves. J. 266 .. ..	492
— v. Williams, 3 M'N. & G. 683 .. ..	170	Pearse v. Pearse, 1 De G. & S. 12 .. ..	206
Hurst v. Padwick, 12 Jur. 31 .. ..	312	Pitcairne v. Brase, Finch, 403 .. ..	492
Ireson v. Pearman, 3 B. & C. 799; 5 D. & R. 687 .. ..	204	Pope v. Whitcombe, Sugd. on Pow. app. 29 ..	311
Iveson v. Conington, 1 B. & C. 160 .. ..	53	Pratt v. Walker, 19 Beav. 261 .. ..	390
Jackson v. James, 1 Bli. 126; 16 Ves. 366 ..	164	Quarrell v. Beckford, 1 Madd. 282 .. ..	86
— v. Parker, AmbL 689 .. ..	164	Queen v. Biram, 17 Q. B. 969 .. ..	103
Jamieson v. Trevelyan and wife, 10 Exch. R. 748 .. ..	502	— v. Burdett, 24 Law J., Mag. Cas. 63 ..	224
Jones v. Roberts, 8 Sim. 397; 7 Law J., N. S., Ch, 156 .. ..	305	Ranger v. Great Western Railway Company, 5 H. of L. Cas. 72, 73 .. ..	490, 492
Kemble v. Farren, 6 Bing. 141 .. ..	492	Ransom, in re, 18 Beav. 220 .. ..	33
Knox v. O'Brien, 3 Ir. Eq. Rep. 62 .. ..	203	Reece v. Rigby, 4 B. & Ald. 202 .. ..	205
Laidler v. Elliott, 3 B. & C. 738; 5 D. & R. 635	205	Reeves v. Hicks, 2 Sim. & S. 403 .. ..	164
Lander v. Ingersoll, 4 Hare, 596 .. ..	205	Richards v. Curlewia, 18 Beav. 462 .. ..	443
Lanny v. Duke of Athol, 2 Atk. 444 .. ..	170	— v. London, Brighton, & South Coast Railway Company, 7 C. B. 839 .. ..	39
Latouche v. Lord Lucan, 7 C. & F. 772 ..	491	Robins v. Bridge, 3 M. & W. 114; 6 Dowl. 140 .. ..	53
Lees v. Nuttall, 3 Myl. & K. 284 .. ..	305	Rodway v. Lucas, 10 Exch. 667 .. ..	349
Lincoln v. Windsor, 9 Hare, 158 .. ..	231	Rodwell v. Walley, 1 Chanc. Rep. 116 ..	164
Lloyd v. Whitty, 19 Beav. 57 .. ..	84	Scott v. Jones, 4 C. & F. 382 .. ..	492
London, Mayor of, v. Combe, 4 H. of L. Cas. 1089 .. ..	18	— v. Scott, 4 H. of L. Cas. 1065 .. ..	19
—, Brighton, and South Coast Railway Company, in re, 18 Beav. 608 .. ..	430	Serace v. Whittington, 3 B. & C. 11; 3 D. & R. 195 .. ..	53
Lord v. Colvin, 3 Drewry, 222 .. ..	224	Seal v. Hudson, 4 D. & L. 760 .. ..	53
Loveridge v. Botham, 1 Bos. & P. 49 .. ..	326	Sharpe's Executors, in re, 15 Sim. 470 ..	281
Lucas v. Roberts, 24 Law J., N. S., Exch. 227	478	Simmonds v. Pallas, 2 J. & L. 489 .. ..	491
M'Culloch v. Gregory, 1 Kay & J. 286 .. ..	126	Simons, in re, 3 D. & L. 500; 14 Law J., N. S., Q. B. 41 .. ..	305
Maile v. Mann, 2 Exch. R. 608 .. ..	53	— in re; Simons v. Pocock, 3 D. & L. 156 .. ..	306
Maline v. Greenway, 10 Beav. 564 .. ..	205	Simpson v. Sudd, 16 C. B. 26 .. ..	243
Manchester and Southport Railway Company, in re, 19 Beav. 365 .. ..	407	Sloper, in re, 18 Beav. 596 .. ..	443
Manning v. Glyn, 1 Jones' Exch. Rep. (Irish) 513 .. ..	478	Smith v. Dimes, 4 Exch. 32; 7 D. & L. 78	306
Menser v. Dix, 1 Kay & J. 451 .. ..	208	— in re, 19 Beav. 339 .. ..	443
Marsh v. Hutchinson, 2 B. & P. 231 .. ..	84	Southmolton, Mayor, &c., of, v. Attorney-Ge- 5 H. of L. Cas. 1, 2 .. ..	490, 492
Marshall v. Corporation of Queenborough, 1 Sim. & S. 520 .. ..	266	Stevenson v. Blakelock, 1 Mau. & S. 535 ..	147
— ex parte, 4 Rail. Ca. 58 .. ..	332	Stretton v. London and North Western Rail- way Company, 16 C. B. 40 .. ..	267
Martin v. Hemming, 10 Exch. 478 .. ..	163	Syers v. Jones, 3 Exch. 111 .. ..	162
Matchett v. Parkes, 9 M. & W. 767 .. ..	326	Synnot v. Simpson, 5 H. of L. Cas. 121 ..	491
Matheson, ex parte, 1 De G., M'N. & G. 448	129		
Maunsell v. Hodges, 4 H. of L. Cas. 1039 ..	20		

	PAGE		PAGE
Taylor v. Gorman, Fl. & K. 567; 4 Ir. Eq. Rep. 550 .. .. .	204	Walwyn v. Coutts, 3 Sim. 14; 3 Mer. 707 ..	491
Terrell v. Hutton, 4 H. of L. Cas. 1091 ..	20	Ward v. Ward, 1 Sim. N.S., 18 .. ..	208
Thomas v. Walker, 18 Beav. 521 .. .. .	430	Waugh v. Middleton, 8 Exch. 352 .. ..	265
Thoroton, ex parte, in re Midland Counties Railway Company, Law J. (1848), Ch. 167	352	Wells, in re, 8 Beav. 416 .. .. .	326
Todd v. Wilson, 9 Beav. 486 .. .. .	231	Wetherall, ex parte, 2 De G., M. & G. 363	429
Toghill v. Grant, in re Board, 2 Beav. 261 ..	305	Weymouth v. Knipe, 3 Bing. N.C. 387; 5 Dowl. 495; 3 Scott, 764 .. .. .	305
Tommey v. White, 3 H. of L. Cas. 68 ..	490	Wiggins v. Lord, 4 Beav. 30 .. .. .	205
Townsend v. Carpenter, Ryan & M. 514; 2 C. & P. 118 .. .. .	53	Wildbore v. Bryan, 8 Price, 677 .. ..	305
Vent v. Pacey, 4 Russ. 193 .. .. .	206	Wilkinson v. Sharland, 10 Exch. 724 ..	126
Walbank v. Quarterman, 3 C. B. 94 .. ..	53	Wilmot v. Corporation of Coventry, 1 Y. & C. Exch. 518 .. .. .	266
Walsingham, Lord v. Goodricke, 3 Hare, 122	206	Wilson v. Emmett, 19 Beav. 233 .. ..	390
Walters, in re, 9 Beav. 299 .. .. .	326	—— v. Wilson, 5 H. of L. Cas. 40, 41	490, 491
		Worrall v. Harford, 8 Ves. 4 .. .. .	491
		Yearsley v. Yearsley, 19 Beav. 1 .. ..	84

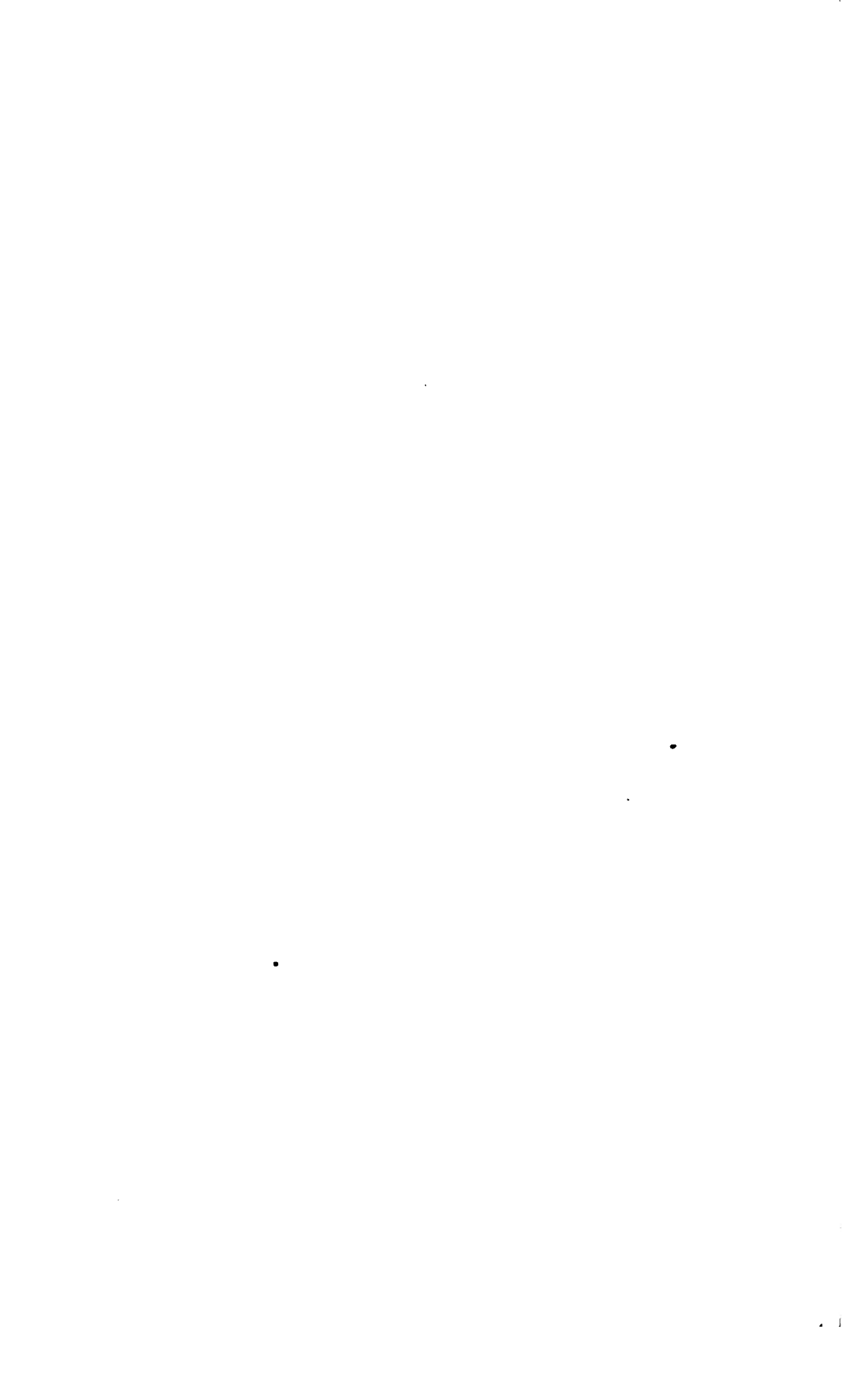
## GENERAL INDEX TO VOLUME L.

ACCOUNTANT-GENERAL'S OFFICE, 205	Chancery returns to Parliament, 140, 228
Acts of Parliament amending Bill, 124 public, 407, 504	Charitable Trusts' Act, 358 Bill, 8
Administration of Oaths in Chancery, 4, 55 abroad, 49, 175 order at Chambers, 84	Chronology, legal, 411, 450
Affidavits in answer to new matter, 465	Cinque Ports, 140, 258
Alterations in the Law, suggestions, 476	Circuits of the Judges, 146, 511 notes on, 351, 370
Agents' bills of costs, taxation of, 304	Commissions, Real Property, Common Law, and Chancery, 158
Appeals, House of Lords, 18, 499	Common Law Acts of last Session, 413
Assizes and Sessions Bill, 177	Commons Inclosure Act, 32
Attested copies of deeds, 180	Conditions of sale, objectionable, 109
Attorneys abroad, 49, 175	Conveyancing practice, 165
personal liability, 53, 204	Copyholds enfranchisement, 95, 370, 391, 407, 411, 444, 465, 510
admission in Ireland, 128	Costs of motion to discharge order, 85
to be admitted, 34, 69, 103, 127, 165	of witnesses at assizes, 326, 443
delivery of papers, 85, 223, 389	under Gaol Act, 85
enrolling articles, 101	of unnecessary appearance, 85
lien, 267	on verdict for a farthing, 348
practising in County Court, 349	of mortgages, 85
agreement to charge costs out of pocket only, 589	in error, 486
delivery of bill, 478	under Lands Clauses Act, 103
Benevolent Institution, 473	of injunction, 390
annual registration, 509	objections to patent, 103
And see <i>Taxation of Costs</i> .	vendor, when liable, 126
Bar, lectures and examinations, 90, 434, 466, 507	insufficient retainer, 248
Barristers called, 89, 165	under the Trustee Act, 281
Beaumont on Bills of Sale, 391	See <i>Solicitor</i> .
Bills of Exchange, new Law of, 2, 57, 242, 256, 393, 495	County Courts, 21, 45, 56, 73, 115, 246, 311, 322 returns, 228
British subject abroad, action against, 136	Courts of Law, new, 26
Building contract, 431	and Equity Acts, 293
Candidates passed at examination, 68, 148	want of ventilation, 269
Certificates renewal, 70, 429	Criminal Justice Act, 377
Chancery, Inns of, 443, 486	Law Acts, 294
despatch of business, 94, 338, 373	Cross-examination of deponent, 84

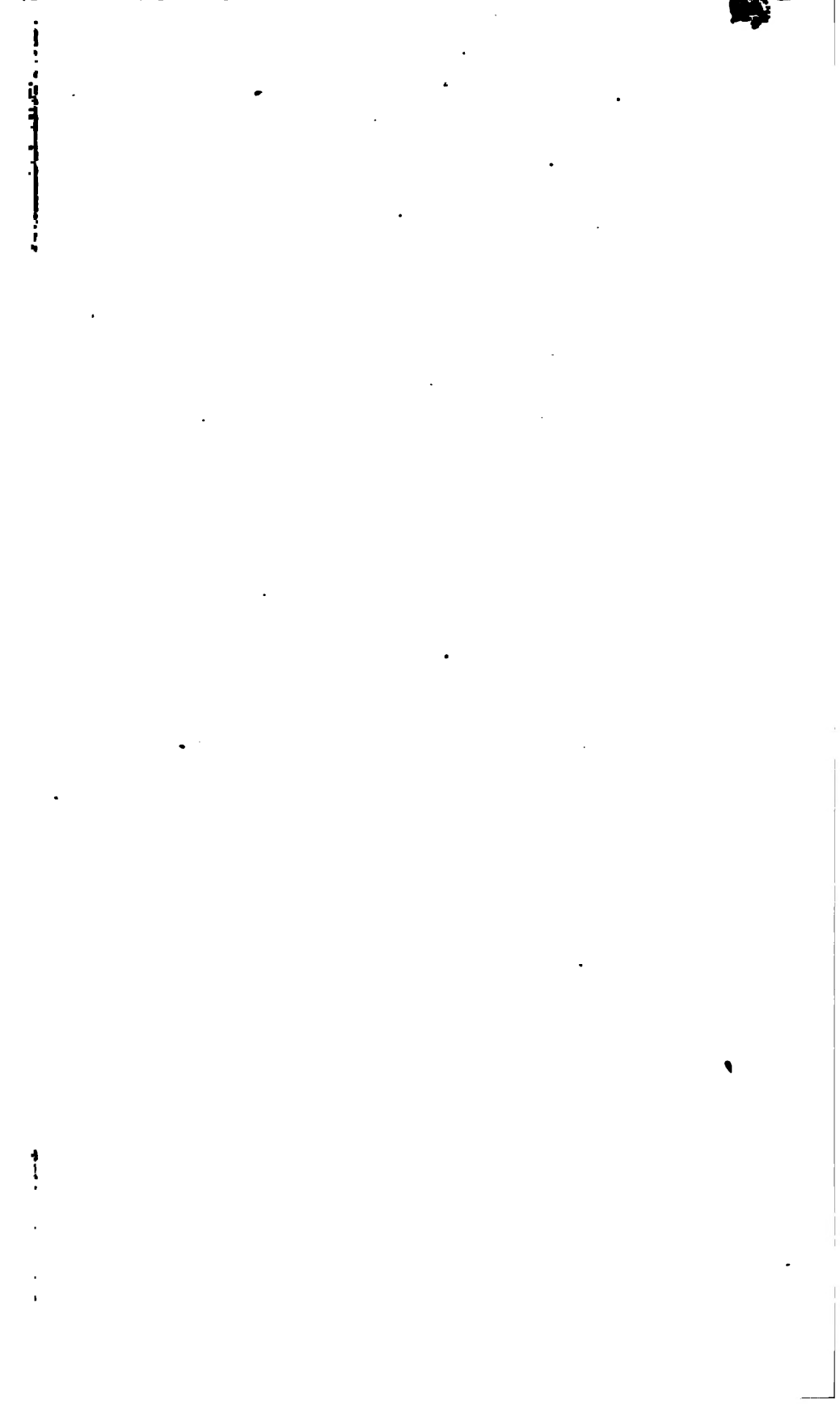
- Crown suit costs, 219, 376  
 Darling on Trusts and Funds, 124  
 Davies and Laurent's Law of France, 144  
 Davis's County Courts, 199  
 Digest of Cases, 18  
 Discovery of Documents, 267  
 Ecclesiastical Courts, 1, 29, 41, 54, 93  
     Act, 176  
 Education and examination of attorneys, 425  
 Embezzlement by bankers, 158  
 Encroachments on the Profession, 487  
 Equity Jurisdiction Act, construction of, 84  
     practice, 443  
 Equitable estate, mortgage, 164  
 Evidence, Law of, 162  
     of hand-writing, 370  
 Examination Questions, 12, 103  
     information as to, 71, 510  
     general and legal, 141  
 Executor and Trustee's Bill, 3, 77, 94  
 Freight, omission in action, 126  
 Friendly Societies' Act, 295, 319, 342  
     regulations, 461  
 House of Commons Proceedings Act, 139  
 Inclosure of Commons' Act, 275  
 Income Tax, 197  
 Incorporated Law Society, 286, 308, 478, 483  
 Incumbered Estates Ireland, 276  
 Infants' Marriage Settlements, 34, 454  
 Inns of Court Examination and Lectures, 90, 466  
 Insolvent Debtors Court admission, 451  
 Insurance offices, 449  
 International Council, 302  
 Interrogatories, delivery of, 162, 267  
 Intestates' Personal Estates Bill, 28  
 Irish Court of Chancery, 44  
 Judges' opinions in House of Lords, 265  
     business at Chambers, 268  
 Juridical Society, 230, 244  
 Justice of Peace Qualification Bill, 120  
 Kerr's Action at Law, 46  
 Lading, Bills of, 77, 398  
 Lancaster County Palatine trials, 123, 236  
 Law Association for Widows, 248  
     Bills in Parliament remaining, 213, 253  
     Courts, new, 304  
     Life Assurance Society, 163  
     reform, state of, 173, 355, 375  
     reporting, proposed reform, 109  
 Leases and sales of settled estates, 42, 47  
 Lessors' costs, 406  
 Lien on bill of exchange, 146  
 Limited liability, 95, 193, 273, 316, 355  
 Local and Personal Acts, 447, 468  
 Lunacy Commission, 444  
     Leases' Act, 32, 455  
 Maule, Mr. Justice, retirement, 189  
 Mercantile Law, Commissioners' Report, 364, 382,  
     400, 420  
 Merchant Shipping Act, 395  
 Metropolitan Buildings Act, 415, 436  
     Local Management Act, 456  
     and Provincial Law Association, 14,  
     87, 106, 390, 487, 505  
 Minutes of decrees, settling, 209  
 Mortmain, Law of, 64  
 Moot points, 67  
 Newspaper Stamp Act, 137  
 Nuisances Removal Act, 496  
 Obituary, legal, 445  
 Oke's Friendly Societies' Manual, 501  
 Parliamentary business remaining, 168  
     standing orders, 387  
 Partnerships dissolved, 70, 187, 249, 329, 431, 510  
 Perpetual Commissioners, 167, 249, 329, 431, 510  
 Pleadings, Common Law, 47, 176  
 Police, Commission of inquiry, 230  
 Post-office regulations, 245, 310, 320, 470  
 Postponed Bills, 314  
 Powers under improvement Acts regulation, 203  
 Privileged communications, 464  
 Production of documents, 206  
 Professional measures, May to October, 493  
 Promotions and appointments, see *Notes of Week*  
 Property, statutes relating to law of, 293  
 Purchasers' Protection Act, 5, 453  
 Railway company, costs on payment into Court,  
     406, 430  
 Real Property Acts of last session, 453  
 Registration of Places of Religious Worship Act,  
     276  
     of judgments, 286  
 Replevin costs, 502  
 Re-registration of judgments, 165  
 Results of last session of Parliament, 293  
 Saturday half-holiday, 70, 86, 109, 209, 327, 370  
 Scotch affidavits swearing in London, 144  
     fees of solicitors, 231  
 Scott's Metropolitan Management Act, 488  
 Selwyn, William, Q. C., Memoir of, 280  
 Sewers' Act (House Drainage), 139  
 Sheil's Eloquence, 404  
 Shellord's Succession Duties, 220  
 Smith's Landlord and Tenant, 50  
     Law of Contracts, 83  
 Solicitors fees now payable under orders of Court,  
     154  
     remuneration, 2, 27, 42, 55, 113, 133, 153,  
     200, 233, 281, 333, 478  
     trustees' costs, see *Trustees*  
 Stannary Courts' Act, 214, 236  
 Statute Law Commission, 78, 229, 261, 301, 387  
 Telford, Mr. Justice, Memorial, 279  
 Taxation of costs, principles of, 323  
     of agent, 304  
     under special order, 369  
         agreement, 33  
         discharge of order for, 406  
         and delivery of bill, 180, 448  
 Tenants' Compensation (Ireland), 43  
 Testamentary Jurisdiction, see *Ecclesiastical Courts*  
 Tooke's Monarchy of France, 345  
 Trial, grounds of new, 162  
 Trustees' costs, 126, 290, 369, 430, 477  
     Act, costs under, 281  
 United Law Clerks' Society, 147, 180  
 Vacation practice at Judges' Chambers, 209  
 Vendor and purchaser, 180  
 Warren's Miscellanies, Juridical &c., 98, 443  
     Blackstone, 178  
     Mr. Recorder's Charge, 224  
 Willes, Mr. Justice, 189  
 Witnesses, examination, 223  
 Writ, special indorsement, 349  
 Yorkshire Law Society, 503  
 Youthful Offenders' Act, 399











Standard Law Library



3 6105 063 322 445

